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CITY OF MERCED, Plaintiff and Appellant,
v.
THE STATE OF CALIFORNIA et al., Defendants
and Respondents.

Civ. No. 7590.

Court of Appeal, Fifth District, California.

Mar 27, 1984.

SUMMARY

The trial court entered judgment denying a city's petition for a writ of mandamus to compel payment of its claim against the State of California for costs of business goodwill it incurred in an eminent domain proceeding as a result of the enactment of Stats. 1975, ch. 1275, which revised and recodified the state's eminent domain laws. The revisions included a new requirement that, upon proof of satisfaction of certain stated conditions, the owner of a business conducted on the condemned property is entitled to compensation for loss of goodwill ([Code Civ. Proc., § 1263.510](#)). In entering judgment denying the writ, the court concluded that the state was liable to the city for payment of business goodwill, but that the court could not order subvention from state funds. (Superior Court of Merced County, No. 69797, George G. Murry, Judge.)

The Court of Appeal affirmed. The court held that the city's payment for business goodwill in a condemnation proceeding it elected to pursue did not constitute the payment of a state-mandated cost pursuant to [Rev. & Tax. Code, § 2231](#), subd. (a), and [Rev. & Tax. Code, § 2207](#). In so ruling, the court held that the Legislature made clear the discretionary nature of the acquisition of property by eminent domain by the passage of [Code Civ. Proc., § 1230.030](#) (also included within Stats. 1975, ch. 1275). Thus, the court held that the Legislature intended for payment of business goodwill to be discretionary as well, and that such an increased cost so incurred as a result of the enactment of the revised eminent domain laws was not a cost which the city was required or mandated to incur. (Opinion by Hamlin, J., with Franson, Acting P. J., and Zenovich, J., concurring.) *778

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 55--Presenting and Preserving Questions in Trial Court--Adherence to Theory of Case--Assertion of New Legal Theory on Appeal.

On appeal from the denial of a city's petition for a writ to compel the state to pay the city for the costs of business goodwill incurred in an eminent domain proceeding, it was permissible for defendants to assert a new legal theory. Although defendants argued for the first time on appeal that in governmental-entity-initiated eminent domain proceedings, payment for business goodwill pursuant to the requirements of Stats. 1975, ch. 1275 (which revised and recodified the state's eminent domain laws), is not a state-mandated cost subject to reimbursement by the state, which argument was a change in defendants' position from its answer to the petition and its stipulation at the hearing on the petition, such issue was purely a question of law. Thus, since the appellate court is not limited by the interpretation of statutes by the trial court, on appeal defendants could correct a position mistakenly taken in the trial court that allegedly was inconsistent with the clear manifestation of the intent of the Legislature.

(2a, 2b, 2c) Eminent Domain § 22--Compensable Property and Rights-- Business Goodwill--Payment by City--Reimbursement From State--State-mandated Cost.

A city's payment for business goodwill in a condemnation proceeding it elected to pursue did not constitute the payment of a state-mandated cost under [Rev. & Tax. Code, § 2231](#), subd. (a), and [Rev. & Tax. Code, § 2207](#). Although Stats. 1975, ch. 1275, which revised and recodified the state's eminent domain laws, included the requirement that upon proof of satisfaction of certain stated conditions the owner of a business conducted on the condemned property is entitled to compensation for a loss of goodwill ([Code Civ. Proc., § 1263.510](#)), the Legislature made clear the discretionary nature of acquisition of property by eminent domain by the passage of [Code Civ. Proc., § 1230.030](#) (also included within Stats. 1975, ch. 1275). Thus, the

Legislature intended for payment of goodwill to be discretionary, and such an increased cost so incurred as a result of the enactment of the revised eminent domain laws was not a cost which the county was required or mandated to incur.

(3) Statutes § 28--Construction--Language--Harmony With Whole System of Law.

The meaning of a statute must, in the first instance, be sought in the language in which it is framed, and if that is plain the sole judicial function is to enforce it according to its terms. Where the *779 language is clear there is no room for interpretation. Moreover, courts will not determine the wisdom, desirability, or propriety of statutes enacted by the Legislature. Additionally, every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. Furthermore, administrative interpretations of statutes should be accorded great respect and followed if not clearly erroneous.

[See [Cal.Jur.3d, Statutes, § 82](#) et seq.; [Am.Jur.2d, Statutes, § 142](#) et seq.]

(4) Appellate Review § 135--Review--Presumptions--Finding by State Agency.

A finding by a state agency is accorded great weight unless it is shown to be clearly erroneous.

COUNSEL

Steven F. Nord, City Attorney, for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, and Geoffrey L. Graybill, Deputy Attorney General, for Defendants and Respondents.

HAMLIN, J.

The Case

By its petition for writ of mandamus and its complaint for declaratory judgment plaintiff sought to compel payment of its claim against the State of California (the State) for costs of business goodwill it incurred in an eminent domain proceeding as a result of the enactment of chapter 1275, Statutes of 1975. Specifically, plaintiff asked the court to order the State Controller to pay plaintiff \$71,350, plus interest, from a State budget line item he deems

appropriate' or, alternatively, to direct the State Controller to pay the amount from a line item the court deems appropriate. The trial court concluded that the State was liable to plaintiff for payment of business goodwill, but that the court could not order subvention from state funds. It therefore entered judgment denying the peremptory writ of mandamus. Plaintiff filed a timely notice of appeal. *780

On appeal, defendants argue for the first time, as we believe they may, that plaintiff's payment for business goodwill in a condemnation proceeding it elected to pursue does not constitute a state-mandated cost. We agree and find it unnecessary to discuss the other contentions of the parties.

The Facts

We include only a brief statement of the undisputed facts which are essential to resolution of the pivotal legal issue involved, i.e., whether plaintiff's payment for business goodwill in the proceeding it initiated to condemn property for its use is a state-mandated cost.

On April 8, 1980, the Merced County Superior Court entered a final order of condemnation in the case entitled City of Merced v. Rodney Barbour and Thomas L. Barbour. This order required plaintiff to pay, along with other sums, \$71,350 allocated to loss of goodwill pursuant to the provisions of [Code of Civil Procedure section 1263.510](#). Plaintiff applied to the State for reimbursement of that amount under the provisions of [Revenue and Taxation Code section 2201](#) et seq. Plaintiff's application for reimbursement was directed to the State Board of Control. That board approved plaintiff's claim. It was included, along with other similar claims, as a line item in chapter 1090, Statutes of 1981. The Legislature deleted from chapter 1090 all claims seeking reimbursement for business goodwill under chapter 1275, Statutes of 1975 (1275 claims). Additionally, the Legislature included in chapter 1090, as amended, a direction that the Board of Control not accept, or submit to the Legislature, any more 1275 claims.

After plaintiff received notice of the above-mentioned action of the Legislature, it initiated this case.

Discussion

I. *The State may assert a new legal theory on appeal.*

(1) Defendants admitted in their answer to the petition for writ of mandamus that chapter 1275, Statutes of 1975, mandated a new program or

increased level of service under provisions of the Revenue and Taxation Code. At the hearing on the petition, defendants stipulated to the same effect and added that plaintiff had not requested that mandate. For the first time on appeal, defendants argue that in governmental-entity-initiated eminent domain proceedings payment for business goodwill pursuant to the requirements of chapter 1275, Statutes of 1975, is not a state-mandated cost subject to reimbursement by the State. Defendants admit this represents a change *781 in their position but that they mistakenly took a position in the trial court inconsistent with the clear manifestation of the intent of the Legislature.

To support their position that defendants may argue on appeal at variance with their answer and admission in the trial court, defendants rely on [Barton v. Owen \(1977\) 71 Cal.App.3d 484 \[139 Cal.Rptr. 494\]](#). There the plaintiff sought medical treatment from defendant for acute sinusitis. After a series of unsuccessful treatments, plaintiff developed a brain abscess which resulted in a prefrontal lobotomy. The plaintiff tried the case on the theory that the physician was negligent in not taking a culture and sensitivity test as part of his diagnosis. He did not prevail. On appeal, plaintiff argued the trial court erred in instructing the jury on contributory negligence. Additionally, plaintiff stated a new theory that failure to take the culture and sensitivity test was negligence as a matter of law. The court allowed the new legal theory on appeal.

Plaintiff points to 3 Witkin, California Procedure (2d ed. 1971) Pleadings, sections 342-344, pages 2009-2011, for the general rule that an admission of fact may not be argued differently on appeal. We agree, but that is not what defendants seek to do. Here, the question of whether a cost is state-mandated is purely a question of law. This court is not limited by the interpretation of statutes by the trial court. (See [In re Davis \(1978\) 87 Cal.App.3d 919, 921 \[151 Cal.Rptr. 29\]](#); [Barton v. Owen, supra., 71 Cal.App.3d at p. 491.](#)) Thus defendants may argue their new legal theory on appeal.

II. Payment of goodwill is not a state-mandated cost.

(2a) By this appeal, plaintiff seeks to compel reimbursement of its payment for business goodwill in a proceeding to acquire property under its power of eminent domain. Plaintiff can succeed only if the payment for which it seeks reimbursement was a state-mandated cost. Our decision on this issue turns upon the meaning of various statutory provisions.

(3) In examining the relevant statutes we apply the basic rules of statutory construction stated by the court in [Marin Hospital Dist. v. Rothman \(1983\) 139 Cal.App.3d 495, 498-499 \[188 Cal.Rptr. 828\]](#). "The meaning of a statute must, in the first instance, be sought in the language in which it is framed, and if that is plain the sole judicial function is to enforce it according to its terms [citation]; where the language is clear there is no room for interpretation [citation]. And courts will not determine the *wisdom*, desirability, or propriety of statutes enacted by the Legislature. [Citation.]

"Moreover, 'every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and *782 have effect.'" ([Select Base Materials v. Board of Equal. \(1959\) 51 Cal.2d 640, 645](#)) We inquire further into 'the whole system of law of which [[Government Code section 26912](#)] is a part.'" (Italics in original.)

Also applicable in this case is the rule that administrative interpretations of statutes should be accorded great respect and followed if not clearly erroneous. ([Noroian v. Department of Administration \(1970\) 11 Cal.App.3d 651, 655 \[89 Cal.Rptr. 889\]](#).) We also rely on extrinsic aids such as the history of relevant statutes, committee reports, and the legislative debates. (*Ibid.*)

(2b) [Revenue and Taxation Code section 2231](#), subdivision (a), includes a direction that: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in [Section 2207](#)...." [Section 2207](#), in turn, provides in pertinent part: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; ..."

Chapter 1275, Statutes of 1975 ([Code Civ. Proc., § 1230.010](#) et seq.) revised and recodified the eminent domain laws of this state. The revisions included a new requirement that, upon proof of satisfaction of four stated conditions, the owner of a business conducted on the condemned property is entitled to compensation for loss of goodwill ([Code Civ. Proc., § 1263.510](#)). [FN1]

FN1 [Code of Civil Procedure section 1263.510](#) provides: '(a) The owner of a business conducted on the property taken, or

(Cite as: 153 Cal.App.3d 777)

on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

'(1) The loss is caused by the taking of the property or the injury to the remainder.

'(2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

'(3) Compensation for the loss will not be included in payments under [Section 7262 of the Government Code](#).

'(4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

'(b) Within the meaning of this article, 'goodwill' consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.'

The costs for which plaintiff seeks reimbursement in this proceeding were incurred by reason of this newly imposed obligation to compensate for loss of business goodwill. [FN2] This squarely presents the issue which we conclude *783 is dispositive of plaintiff's appeal, i.e., is the increased cost so incurred as a result of enactment of chapter 1275, Statutes of 1975, a cost which plaintiff was *required* or *mandated* to incur?

FN2 Until enactment of chapter 1275, Statutes of 1975, goodwill was not compensable in eminent domain proceedings. (See 5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, § 586, p. 3882.)

In support of the statutory construction it urges, plaintiff points to the Board of Control's decision in March 1981 that 1275 claims were for reimbursement of state-mandated costs. (4)Plaintiff correctly notes that such a finding by a state agency is accorded great weight unless shown to be clearly erroneous. ([Noroian v. Department of Administration, supra., 11 Cal.App.3d at p. 655.](#))

(2c)Defendants counter that the Legislature declared

its intent that 1275 claims not be considered state-mandated by rejecting the line item of the budget providing funds for payment of 1275 claims and by directing that the Board of Control not approve or submit to the Legislature any more 1275 claims. (Stats. 1981, ch. 1090.) Defendants rely on [Tyler v. State of California \(1982\) 134 Cal.App.3d 973, 977 \[162 Cal.Rptr. 82\]](#), to support their position that, where a statute is unclear, a later expression of the Legislature bearing upon the intent of the prior statute may be properly considered in determining the effect and meaning of the prior statute.

More significantly, defendants argue that the Legislature made clear the discretionary nature of acquisition of property by eminent domain by passage of [Code of Civil Procedure section 1230.030](#). [Section 1230.030](#) was included within chapter 1275, Statutes of 1975, the same legislation that changed the law of eminent domain to require compensation for business goodwill. [Section 1230.030](#) provides: 'Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.'

We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.

This construction is confirmed by subsequent legislative actions, including the enactment of Senate Bill No. 90 (Russell), 1979-1980 Regular Session. *784 Among other things, that bill (Sen. Bill No. 90) added [Revenue and Taxation Code section 2207](#), subdivision (h):

"Costs mandated by the state' means any increased costs which a local agency is required to incur as the result of the following:

.....

'(h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program.'

Senate Bill No. 90 became effective on July 1, 1981, after plaintiff incurred the cost of business goodwill for which it seeks reimbursement. Subdivision (h) appears to have been included in the bill to provide for reimbursement of increased costs in an optional program such as eminent domain when the local agency has no reasonable alternative to eminent domain. The legislative history of Senate Bill No. 90 supports the conclusion that subdivision (h) was added to [Revenue and Taxation Code section 2207](#) to extend state liability rather than to clarify existing law. The Report of the Assembly Revenue and Taxation Committee (June 9, 1980) includes a statement: 'SB 90 further defines 'mandated costs' in Sections 4 and 5 to include the following:

'
.....

'e. Where a statute or executive order adds *new requirements to an existing optional program*, which increases costs if the local agency has no reasonable alternative than to continue that optional program.' (Rep., p. 1, italics in original.)

Additionally, the Ways and Means Committee's Staff Analysis (Aug. 4, 1980) notes that Senate Bill No. 90: 'Expands the definition of *local* reimbursable costs mandated and paid by the state to include:

'
.....

'e. Statutes or executive orders adding *new requirements to an existing optional program*, which increases costs if the local agency has no reasonable alternative than to continue that optional program.' (P. 2, italics in original.) *785

Both reports quoted above characterize Senate Bill No. 90 as expanding the definition of local reimbursable costs. The Legislative Analyst's Report of July 30, 1980, on Senate Bill No. 90 similarly includes a statement that the bill expands the definition of state-mandated costs. Such characterizations of the purpose of Senate Bill No. 90 are consistent only with the conclusion that, until that

bill was enacted, increased costs incurred in an optional program such as eminent domain were not state-mandated. Thus the cost of business goodwill for which plaintiff was required by chapter 1275, Statutes of 1975, to pay in April 1980, was not a state-mandated cost. It follows that the trial court properly denied the petition for a writ of mandamus to compel payment of that cost. Our conclusion on this pivotal issue makes it unnecessary to consider plaintiff's contentions that article XIII B of the California Constitution requires the State to provide a subvention of funds to reimburse state-mandated costs, that there are appropriated funds available to pay plaintiff's claim, and that a peremptory writ of mandate is the appropriate remedy in this case.

The judgment is affirmed.

Franson, Acting P. J., and Zenovich, J., concurred.

Appellant's petition for a hearing by the Supreme Court was denied May 24, 1984. *786

Cal.App.5.Dist.,1984.

City of Merced v. State of California

END OF DOCUMENT



COUNTY OF CONTRA COSTA et al., Plaintiffs
 and Respondents,
 v.
 THE STATE OF CALIFORNIA, Defendant and
 Appellant.

Civ. No. 24357.

Court of Appeal, Third District, California.

Jan 31, 1986.

SUMMARY

Thirty-eight counties and the County Supervisors Association of California filed a complaint for declaratory relief against the state seeking a judicial declaration that 20 bills enacted in the 1980-1981 legislative session and three bills enacted after January 1, 1975, but before the effective date of Cal. Const., art. XIII B, were invalid, unconstitutional, or unenforceable because such bills established "reimbursable mandates" requiring the state, whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, to provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service-with certain exceptions, and the state failed to provide a subvention for reimbursement of the cost imposed for any of the bills in question. The trial court ruled that the bills were void or had become unenforceable because the state had, indeed, failed to provide a subvention for reimbursement of costs imposed on local governments as is required by Cal. Const., art. XIII B. (Superior Court of Sacramento County, No. 300784, James Timothy Ford, Judge.)

The Court of Appeal reversed, holding that, as to the bills enacted in the 1980-1981 legislative session, plaintiffs failed to exhaust their administrative remedy to obtain reimbursement for the cost of implementing state-mandated programs, and, absent an exception to the rule requiring the exhaustion of administrative remedies, which did not exist with regard to these bills, this requirement was a jurisdictional prerequisite to their resort to the courts. Stating that an administrative enforcement procedure

is part of the legislative process and that the legislative process remains incomplete until the administrative remedy is exhausted, the court held that a judicial action before the legislative process has been completed is premature and a court is without jurisdiction until administrative remedies have been exhausted, absent an exception to the rule, which did not exist here. The court further held that plaintiffs did not establish the futility exception to the exhaustion *63 of remedies requirement by showing that only 8 of 24 claims previously submitted to the administrative process had been funded; the fact that some, if only a few, of the claims had been funded precluded plaintiffs from establishing the exception. As to the three remaining bills, the court held that two fell within an exception to [Cal. Const., art. XIII B, § 6](#), which excepts legislation defining a new crime or legislation changing an existing definition of a crime from the reimbursement requirement, and that the third, requiring a condemnor to pay for business goodwill when condemning property, was not a bill requiring reimbursement. A county is not required to condemn property, and must pay for goodwill only when it elects to condemn. Therefore, payment for loss of goodwill is not a state-mandated cost under [Rev. & Tax. Code, § § 2231, 2270](#). (Opinion by Sparks, J., with Puglia, P. J., and Sims, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 86--Judicial Review and Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Statement of Doctrine.

Where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act. When no exception applies, the exhaustion of an administrative remedy is a jurisdictional prerequisite to resort to the courts. This doctrine is not a matter of judicial discretion but is a fundamental rule of procedure.

[See [Cal.Jur.3d, Administrative Law, § 262](#); [Am.Jur.2d, Administrative Law, § 595](#).]

(2) Administrative Law § 89--Judicial Review and

Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Exceptions.

The doctrine of exhaustion of administrative remedies is not an inflexible dogma. It contains its own exceptions, as when the subject matter of the controversy lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy, and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be. Thus, the doctrine precludes original judicial actions only in the absence of those exceptions. *64

(3) Administrative Law § 88--Judicial Review and Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Constitutional Issues.

The doctrine of exhaustion of administrative remedies applies to actions which raise constitutional issues. There is an exception when the constitutionality of the agency itself is challenged. A litigant is not required to exhaust his administrative remedies where the challenge is to the constitutionality of the administrative agency.

(4) Constitutional Law § 7--Operation and Effect--Mandatory, Directory, and Self-executing Provisions.

The fact that a constitutional provision is self-executing does not relieve a party from complying with reasonable procedure for assertion of the constitutional right. While the Legislature may not unreasonably curtail or impair a right granted by a self-executing constitutional provision, it may adopt reasonable procedural requirements for assertion of the right.

(5a, 5b) Constitutional Law § 39--Distribution of Governmental Powers-- Between Branches of Government--Legislative Power and Its Limits.

While our branches of government are coequal they are not completely independent. Although the Legislature cannot exercise judicial functions or deprive the courts of judicial powers, it may regulate procedures and place reasonable restrictions upon judicial functions. While the Legislature cannot act as a "supercourt," rejecting judicial decisions with which it disagrees, it may make a law to prospectively abrogate the effect of a judicial decision. Thus, where the Legislature provided for a procedure before an administrative agency by which local governmental entities could present claims for reimbursement of the cost of state mandates imposed on such entities, have those claims determined, and have the result of those proceedings reviewed in a

judicial proceeding, several counties were required to exhaust that administrative remedy before seeking to have the legislative bills containing the state mandates judicially declared void. The determination of reimbursement claims was within the jurisdiction of the administrative agency by legislative decree, pursuit of the remedy would not result in irreparable harm, the agency could grant an adequate remedy, and the agency's decision was not preordained. Failure to exhaust those remedies was therefore jurisdictional.

(6) Administrative Law § 86--Judicial Relief and Review--Limitations on Availability--Exhaustion of Administrative Remedies--Statement of Doctrine.

An administrative procedure is part of the legislative process and the legislative process remains incomplete until the administrative remedy is exhausted. A judicial action before the legislative process has been completed is premature and a court is without *65 jurisdiction until administrative remedies have been exhausted, unless there exists an exception to the rule requiring the exhaustion of administrative remedies.

(7a, 7b) Administrative Law § 89--Judicial Review and Relief-- Limitations on Availability--Exhaustion of Administrative Remedies--Exceptions.

The futility exception to the requirement of exhaustion of administrative remedies is a very narrow one. Insofar as a futility exception exists, as when it can be demonstrated that an agency's decision is certain to be adverse, its application is very limited. Thus, exhaustion of administrative remedy is required unless the appellant can positively state that the administrative agency has declared what its ruling will be in a particular case.

(8) Administrative Law § 89--Judicial Review and Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Exceptions.

In an action in which several counties sought to have several legislative bills judicially declared invalid, on the ground that the bills allegedly imposed state-mandated costs but were not funded by the Legislature, plaintiffs did not establish the futility exception to the exhaustion of remedies requirement by showing that only 8 of 24 claims previously submitted to the administrative process had been funded. The fact that some, if only a few, of the claims had been funded precluded plaintiffs from establishing the exception.

(9) Eminent Domain § 22--Compensable Property and Rights--Business Goodwill--Payment by City--

Reimbursement From State--State-mandated Cost.

Whether a county decides to exercise eminent domain is essentially an option of the county rather than a mandate of the state. The county is not required to exercise eminent domain, but if it does, then it must pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost under [Rev. & Tax. Code, § 2231](#), subd. (a), and [Rev. & Tax. Code, § 2207](#).

(10) Public Funds § 5--Expenditures.

[Pen. Code, § 597w](#), making it a misdemeanor to use high-altitude decompression chambers to destroy dogs and cats, constitutes legislation defining a new crime or changing the definition of an existing crime, and as such is expressly excluded from the operation of Cal. Const., art XIII B. Consequently, the state need not provide a subvention of funds to reimburse a local government for the cost of substituting a new program. *66

COUNSEL

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Carol Hunter and Jeffrey J. Fuller, Deputy Attorneys General, for Defendant and Appellant.

Thomas M. Cecil, Richard A. Elbrecht, John C. Lamb, Mary-Alice Coleman, Altshuler & Berzon, Fred H. Altshuler, Marsha S. Berzon, Beeson, Tayer & Silbert, Franklin Silver, Kenneth Absolam, Laurence Gold, Remy & Thomas and Roger Dickinson as Amici Curiae on behalf of Defendant and Appellant.

Douglas J. Maloney, County Counsel, for Plaintiffs and Respondents.

James P. Jackson, City Attorney, and William P. Carnazzo, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Respondents.

SPARKS, J.

In this declaratory relief action the Superior Court of Sacramento County entered a judgment declaring that 14 bills enacted during the 1980-1981 legislative session were void, and that the challenged bills enacted in 1975 and in 1978 have become unenforceable. The court reasoned that the state had failed to provide a subvention for reimbursement of the costs imposed on local governments as is required

by [California Constitution, article XIII B, section 6](#). The defendant State of California appeals contending that the plaintiffs failed to exhaust their administrative remedies, and that the contested statutes do not constitute reimbursable mandates under the constitution. We conclude that the state's position on exhaustion is the correct one and therefore reverse the judgment.

Factual and Procedural Background

As we noted in [City of Sacramento v. State of California \(1984\) 156 Cal.App.3d 182 \[203 Cal.Rptr. 258\]](#), "[t]he question of reimbursement had its genesis in the 'Property Tax Relief Act of 1972.' (Stats. 1972, ch. 1406, § 1, p. 2931.) That act, generally known as 'SB 90,' provided for a system of limitations on local governments' power to levy property taxes, with the concomitant requirement of reimbursement to such local governments for costs mandated upon them by the state in the form of increased levels of services or programs [¶] On November 6, 1979, California voters determined to make a limitation-reimbursement system similar to 'SB 90' a part of the Constitution. By initiative measure at the special statewide election *67 on that date, the voters enacted Proposition 4, thereby adding article XIII B to the California Constitution The so-called 'Spirit of 13' initiative provided for limitations on the ability of all California governmental entities to appropriate funds for expenditures. ([Cal. Const., art. XIII B, § 1, 8](#), subds. (a), (b).)" (*Id.*, at p. 188.)

Fiscal relief to local governments was provided in the provision we are concerned with in this case, [section 6 of article XIII B](#). [Section 6](#) provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." [Article XIII B](#) became effective on July 1, 1980. ([Art. XIII B, § 10](#).) [FN1]

FN1 After the adoption of [article XIII B, section 6](#), the Legislature in 1980 amended [Revenue and Taxation Code sections 2207](#) and [2231](#), and expanded the definition of "costs mandated by the State" by including certain specified statutes enacted after January 1, 1973. (Stats. 1980, ch. 1256, § 5, p. 4248.) In [County of Los Angeles v. State of California \(1984\) 153 Cal.App.3d 568, 573 \[200 Cal.Rptr. 394\]](#), the court concluded that "this reaffirmance constituted the exercise of the Legislative discretion authorized by [article XIII B, section 6](#), subdivision (c), of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975]."

This action was commenced on January 11, 1982, when 38 counties and the County Supervisors Association of California (Counties) filed a complaint for declaratory relief against the State of California. The Counties set forth a list of 20 bills enacted in the 1980-1981 legislative session which they contend establish reimbursable mandates but for which no subvention of funds has been provided. They also set forth three bills enacted after January 1, 1975, but before the effective date of [article XIII B](#), which they allege establish reimbursable mandates but for which no subvention of funds has been provided. The Counties sought a declaration that the challenged statutory enactments are invalid, unconstitutional, and/or unenforceable. The state, represented by the Attorney General, answered the complaint by denying that the challenged bills were invalid or unconstitutional, and asserting as an affirmative defense that the Counties had failed to exhaust their administrative remedies.

Before trial the Counties withdrew their challenge to four of the bills enacted in the 1980-1981 legislative session. A court trial was held with *68 regard to 16 bills enacted in that session, and 3 bills enacted in 1975, 1976, and 1978. The trial court issued a tentative decision holding that the Counties had failed to exhaust their administrative remedies by failing to submit their claims to the Board of Control as provided for in [Revenue and Taxation Code sections 2231](#) and [2250](#) and following. The court also indicated an intent to hold that [article XIII B](#) does not apply to bills enacted before its effective date.

The Counties moved for a new trial. In support of their motion they submitted a written statement of the

Board of Control concerning a claim of the Pajaro Valley Unified School District for reimbursement for costs mandated by a state regulation ([Cal. Admin. Code, tit. 5, § § 90-101](#), relating to voluntary desegregation). The board determined that the regulation did not impose reimbursable state-mandated costs. In doing so the board stated that its authority to review claims for reimbursement was limited to statutory provisions for reimbursement under provisions in the Revenue and Taxation Code and did not extend to claims under the Constitution. [FN2] This decision was submitted in support of Counties' argument that they had no administrative remedy for claims arising under the Constitution. A new trial was granted.

FN2 That piece of evidence added nothing to the dispute. First of all, the decision of the Board of Control was not rendered until May 26, 1983, more than a year and five months *after* this lawsuit was filed. It hardly justifies the failure of the Counties to seek their administrative remedy before they filed this suit. Secondly, the board only "determined that its authority to review alleged mandates was limited to the authority delineated in the [Revenue and Taxation Code, Section 2201](#) et seq." The Counties have failed to show how that determination precluded the board from granting relief in this case.

Upon a new trial the court held that the Board of Control does not have the authority or jurisdiction to determine whether a statute contains a reimbursable mandate under the Constitution. The court further found that even if the board had such authority it would have been futile for the Counties to have exhausted their administrative remedies. The court held that 14 bills enacted during the 1980-1981 legislative session contained reimbursable mandates and since the Legislature has not provided a subvention of funds the court found those acts to be void. With respect to acts enacted in 1975 and in 1978, the court held that the acts were valid when enacted but that since the Legislature had failed to provide a subvention of funds after the effective date of [article XIII B](#), the acts had become unenforceable.

Judgment was entered holding the following legislative enactments to be void: (1) Statutes of 1981, chapter 1141, relating to taxation; (2) Statutes of 1981, chapter 617, relating to fire inspection

(Cite as: 177 Cal.App.3d 62)

records; (3) Statutes of 1981, chapter 618, relating to juvenile courts; (4) Statutes of 1981, chapter *69 1111, relating to parole; (5) Statutes of 1981, chapter 846, relating to real property; (6) Statutes of 1981, chapter 1088, relating to the California Debt Advisory Commission; (7) Statutes of 1981, chapter 962, relating to environmental quality; (8) Statutes of 1981, chapter 332, relating to juvenile court law; (9) Statutes of 1981, chapter 990, relating to developmental disabilities; (10) Statutes of 1981, chapter 612, relating to local agency employer-employee relations; (11) Statutes of 1981, chapter 958, relating to small claims court; (12) Statutes of 1981, chapter 875, relating to minors; (13) Statutes of 1981, chapter 866, relating to public contracts; and (14) Statutes of 1981, chapter 876, relating to building standards. The judgment also declared the following legislative enactments to be unenforceable: (1) Statutes of 1975, chapter 1275, relating to acquisition of property for public use; and (2) Statutes of 1978, chapter 1146, relating to animals.

Discussion

I

As we noted in *City of Sacramento*, the concept of reimbursement of local governmental entities for state mandated costs did not begin with the enactment of article XIII B to the Constitution. In the Property Tax Relief Act of 1972 the Legislature had earlier provided for limitations on local governments' power to levy property taxes, with a requirement of reimbursement to such local governments for costs mandated by the state in the form of increased levels of services or programs. This statutory limitation-reimbursement scheme is contained in [Revenue and Taxation Code section 2201](#) et seq. (Stats. 1973, ch. 358, § 3, p. 779.) [FN3] [Section 2207](#) provides: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program. [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] (d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels above the levels required by such federal statute or regulation. [¶] (e) Any statute

enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment *70 adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure. [¶] (f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service. [¶] (g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of the program or service. [¶] (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

FN3 All further section references are to the Revenue and Taxation Code unless otherwise indicated.

[Section 2231](#), subdivision (a) provides that the state shall reimburse local agencies for all costs mandated by the state as defined in [section 2207](#). [FN4] Subdivision (b) of [section 2231](#) provides that the reimbursement for the initial fiscal year shall be provided by an appropriation in the statute mandating the costs or, in the case of an executive order, by a bill appropriating the funds which must accompany the order or alternatively by a provision in the Budget Bill for the following fiscal year. In the following fiscal years the costs are to be included in the State Budget and in the Budget Bill. The State Budget and the Budget Bill shall also include appropriations for reimbursement of claims which have been awarded pursuant to section 2253, subdivisions (b), (c), and (d). The procedure for the submission and payment of claims by local governments is also set forth in [section 2231](#).

FN4 [Section 2231](#) also provides for reimbursement to school districts for costs

mandated by the state as defined in section 2207.5. We are not here concerned with the claims of any school district so we shall restrict our discussion to the provisions applicable to reimbursement of local governments.

Section 2240 and the sections following it set forth the procedure for determining and appropriating funds for the reimbursement of local governments. Essentially, the Legislative Counsel is to make the initial determination whether a bill will require reimbursement. (§ 2241.) If it will then the Department of Finance is to estimate the amount of reimbursement which will be required. (§ § 2242-2243.) In every subsequent fiscal year the State Budget and the Budget Bill shall contain appropriations for reimbursement of such costs. (§ 2245.) The Department of Finance and the Legislative Analyst are to make yearly reports to the Legislature with respect to *71 unfunded statutes to aid in determining whether reimbursement is in fact required and whether the mandate should be repealed. (§ § 2246, 2246.1.)

[Section 2250](#) and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a "test claim" or a "claim of first impression." (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to [Code of Civil Procedure section 1094.5](#) to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.)

At least twice each calendar year the board is required to report to the Legislature on the number of

mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or *72 (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).) [FN5]

FN5 At the time this litigation commenced section 2255 did not contain any alternative for the Legislature to appropriate funds to pay for mandates found by the board, and did not provide for a suit to declare the mandate void and enjoin its enforcement. (Subds. (b) and (c).) These provisions were added in 1982. (Stats. 1982, ch. 327, § 147,

pp. 1480-1481; Stats. 1982, ch. 1638, § 7, pp. 6662-6663.)

Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. ([Gov. Code, § 17525.](#)) "Costs mandated by the state" are defined as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution.](#)" ([Gov. Code, § 17514.](#)) The procedures before the commission are similar to those which were followed before the Board of Control. ([Gov. Code, § 17500](#) et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. ([Gov. Code, § 17630](#); § 2239.) [FN6] *73

FN6 In 1984, the Legislature established a State Mandates Claims Fund. ([Gov. Code, § 17614.](#)) Claims for which the statewide cost does not exceed \$500,000 are to be paid from the fund by the Controller upon certification of parameters and guidelines by the commission. ([Gov. Code, § 17610.](#)) For purposes of these claims the fund is to be continuously appropriated without regard to fiscal years. ([Gov. Code, § 17614.](#)) The Counties suggest that the Legislature attempted, by this legislation, to limit reimbursement for state mandates to those claims which are less than \$500,000 statewide, a limitation which is not found in the Constitution. They are mistaken. Claims for which the statewide costs exceeds \$500,000 are not precluded; rather, the appropriation for such claims must be contained in a local government claims bill rather than a continuous appropriation without regard to fiscal years. ([Gov. Code, § 17612](#), subd. (a), 17614.)

The Attorney General contends that exhaustion of these administrative remedies constituted a condition precedent for resort to this judicial action for declaratory relief. We agree. (1)The doctrine of exhaustion of administrative remedies, it has been held, is not a matter of judicial discretion but is a fundamental rule of procedure. ([Abelleira v. District Court of Appeal \(1941\) 17 Cal.2d 280, 293 \[109 P.2d 942, 132 A.L.R. 715\].](#)) "In brief, the rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." ([Id., at p. 292.](#)) When no exception applies, the exhaustion of an administrative remedy is a jurisdictional prerequisite to resort to the courts. ([Id., at p. 293.](#)) The cases which so hold are legion. (See 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 234, pp. 264-265; 2 Witkin, *op. cit., supra.*, Jurisdiction, § 69, p. 437.) As Witkin explains it, "[t]he administrative tribunal is created by law to adjudicate the issue sought to be presented to the court. The claim or 'cause of action' is within the special jurisdiction of the administrative tribunal, and the courts may act only to *review* the final administrative determination. If a court allowed a suit to be maintained prior to such final determination, it would be interfering with the subject matter jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative remedy has been held *jurisdictional* in California." (3 Witkin, *op. cit., supra.*, Actions, § 234, p. 265; italics in original.) But before the doctrine can be said to be jurisdictional it must first apply to the case at issue. (2)As the Court of Appeal explained in [Ogo Associates v. City of Torrance \(1974\) 37 Cal.App.3d 830 \[112 Cal.Rptr. 761\]](#), "the doctrine of exhaustion of administrative remedies has not hardened into inflexible dogma. It contains its own exceptions, as when the subject matter of the controversy lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy, and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." ([Id., at p. 834](#), citations omitted; see also 4 Davis, Administrative Law Treatise (2d ed. 1983) The Exhaustion Problem, § 26:1, pp. 414-415.) Thus the jurisdictional sweep of the doctrine presupposes that none of these recognized exceptions applies. Consequently, the doctrine precludes original judicial actions only in the absence of those exceptions. The question in this case then is whether any of the exceptions apply here. As

we shall explain, none does.

By the Property Tax Relief Act of 1972, the Legislature assumed a statutory obligation of reimbursing local governments for state mandated costs, including any costs incurred by the local government as the result of any law enacted after January 1, 1973, "which mandates a new program or an increased level of service of an existing program." (§ 2207, subd. (a), 2231.) At the same time, the Legislature provided an administrative procedure *74 with the right to judicial review by which claims that a law requires reimbursement may be made and determined. (§ 2250 et seq.; Gov. Code, § 17500 et seq.) As a statutory requirement for reimbursement the 1972 provisions were subject to amendment or repeal by the Legislature. (*County of Los Angeles v. State of California*, supra., 153 Cal.App.3d at p. 573.) Perhaps in recognition of its repealable and thus impermanent character, the People, by enacting article XIII B, have imposed a constitutional requirement of reimbursement. Yet nothing in article XIII B renders the statutory administrative procedure for hearing and determining claims void. That procedure remains a viable administrative remedy by which the local governments may claim reimbursement for state mandated costs.

The Counties contend that they are not required to exhaust the administrative remedy because they are asserting that the challenged acts are unconstitutional. [FN7] (3) However, the doctrine of exhaustion of administrative remedy applies to actions raising constitutional issues. (*Security-First Nat. Bk. v. County of L.A.* (1950) 35 Cal.2d 319, 321 [217 P.2d 946]; *United States v. Superior Court* (1941) 19 Cal.2d 189, 195 [120 P.2d 26]; *People v. Coit Ranch, Inc.* (1962) 204 Cal.App.2d 52, 57-58 [21 Cal.Rptr. 875]; *Tushner v. Griesinger* (1959) 171 Cal.App.2d 599, 604-608 [341 P.2d 416]; see also 3 Witkin, *op. cit.*, supra., Actions, § 236, p. 267; Reed, *Exhaustion of Administrative Remedies in California* (1968) 56 Cal.L.Rev. 1061, 1073-1074.) It is true that there is an exception when the constitutionality of the *75 agency itself is challenged. A litigant is not required to exhaust his administrative remedies where the challenge is to the constitutionality of the administrative agency. (*State of California v. Superior Court (Veta)* (1974) 12 Cal.3d 237, 251 [115 Cal.Rptr. 497, 524 P.2d 1281].) But here the Counties are not challenging the constitutionality of the State Board of Control, the Commission on State Mandates, or even the statutory scheme for hearing and determining claims; instead, they are asserting that they need not submit to that procedure because

the claims they assert have roots in the Constitution. Their claim is that a provision for subventions is a constitutional condition precedent to the enactment of statutes which impose local mandates. If the subvention is not included in the statute, or at least prior to the effective date of the statute, they argue, the enactment violates section 6 of article XIII B. Thus the claim asserted in this case is that the cost mandating statutes are unconstitutional and that claim does not fall within the exception to the rule that administrative remedies must be exhausted prior to resort to the courts. (*Id.*, at pp. 249-250.) [FN8]

FN7 In contending that a failure to provide a subvention of funds renders a bill void, the Counties rely upon four cases from three other states with constitutional provisions mandating reimbursement to local governments. However, the provisions involved in those states contained markedly different language from our constitutional provision. In Missouri the provision states that "[a] new activity or service or an increase in the level ... shall not be required by [the state] unless a state appropriation is made and disbursed ." (See *State v. County Court of Greene County* (Mo. banc 1984) 667 S.W.2d 409, 411; *Boone County Court v. State* (Mo. banc 1982) 631 S.W.2d 321, 323.) In Michigan the provision states "The state is prohibited from requiring any new or expanded activities ... without full financing" (See *Delta County v. Mich. Dept. of Nat. Resources* (1982) 118 Mich.App. 458 [325 N.W.2d 455, 456].) In Massachusetts the provision states that a statutory mandate "shall be effective ... only if ..." financing is provided by the state. (See *Town of Lexington v. Commissioner of Educ.* (1985) 393 Mass. 693 [473 N.E.2d 673, 675].) In those states there is no provision for any administrative remedy because the unfunded legislation is simply not effective. In contrast, the California constitutional provision requires that when the state mandates a new program or higher level of service "the state shall provide a subvention of funds to reimburse" the local government. (Art. XIII B, § 6.) The Legislature has provided an administrative remedy when the state fails to reimburse the local entity. It is only after the Legislature has deleted the reimbursement contained in the administrative agency's report and in the

local government claims bill that the local agency "may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." ([Gov. Code, § 17612](#), subd. (b); see also § 2255, subd. (c), providing the mandate may be declared void and its enforcement enjoined if the Legislature deletes reimbursement from a local government claims bill funding for a mandate but does not follow one of the alternative courses of action provided for in subd. (b).)

FN8 The Counties alleged that the Board of Control (now the Commission on State Mandates) does not have the jurisdiction to consider claims under the Constitution. The trial court agreed. In fact, an administrative agency does not have the power to declare a statute unconstitutional or unenforceable. ([Cal. Const., art. III, § 3.5.](#)) But the Board of Control (now the commission) has the power to determine whether a statute or regulation mandates a new program, or higher level of service of an existing program and whether there are any "costs" mandated by the legislation. A proceeding before the board will promote judicial efficiency by unearthing the relevant evidence and providing a record which the court may review. (See [Edgren v. Regents of the University of California \(1984\) 158 Cal.App.3d 515, 521 \[205 Cal.Rptr. 61\]](#).) It is still the rule that a party must exhaust administrative remedies even though, if unsuccessful, he intends to raise constitutional issues in a judicial proceeding. (See [Mountain View Chamber of Commerce v. City of Mountain View \(1978\) 77 Cal.App.3d 82, 96 \[143 Cal.Rptr. 441\]](#).) We note parenthetically that the interplay between the constitutional and the statutory provisions for reimbursement of counties in the context of a board proceeding is pending before the Supreme Court. (*County of Los Angeles v. State of California*, L.A. 32106, rev. granted Sept. 19, 1985.)

Counties emphasize that they consider [article XIII B](#) to be self executing and consequently they may disregard the statutory scheme for claiming reimbursement for state mandated costs. (4)But the

fact that a constitutional provision is self executing does not relieve a party from complying with reasonable procedures for assertion of the right. While the Legislature may not unreasonably curtail or impair a right granted by a self executing constitutional provision, it may adopt reasonable procedural requirements for assertion of the right. ([Vinnicombe v. State of California \(1959\) 172 Cal.App.2d 54, 56 \[341 P.2d 705\]](#).) For example, former article I, section 14 of the Constitution prohibited the taking or damaging of private property for public use "without just compensation having first been made to, or paid into court for, the owner." This section was self executing and under its provisions a property owner could maintain an action against a governmental entity that took or damaged his property. ([*76Powers Farms v. Consolidated Irr. Dist. \(1941\) 19 Cal.2d 123, 126 \[119 P.2d 717\]](#).) In the *Powers Farms* case the plaintiff brought an action against an irrigation district for damage to its property without first filing a verified claim with the district as required by the Irrigation District Liability Law (Stats. 1935, ch. 833, p. 2250). The plaintiff claimed that it did not have to comply with the claims statute because its action was based upon the self executing constitutional provision. The Supreme Court said: "But the fact that the cause of action is one of that kind does not exclude it from the operation of a claim statute, the terms of which are broad enough to embrace it. Although the Constitution grants the right to compensation, it does not specify the procedure by which the right may be enforced. Such procedure may be set up by statutory or charter provisions, and when so established, a failure to comply with it is deemed to be a waiver of the right to compel the payment of damages." (*Ibid.*, citations omitted.) Thus, as the high court later held in [City of San Jose v. Superior Court \(1974\) 12 Cal.3d 447 \[115 Cal.Rptr. 797, 525 P.2d 701, 76 A.L.R.3d 1223\]](#), the "fact that inverse condemnation is founded directly on the [California Constitution \(art. I, § 14\)](#) neither excuses plaintiffs from compliance with the claims statutes, nor renders the claims statutes unconstitutional." (*Id.*, pp. 454-455, citations omitted.) Similarly, former Government Code section 16047, which required an undertaking as a condition of bringing an action against the state, was held applicable to actions brought under former article I, section 14. ([Vinnicombe v. State of California, supra., 172 Cal.App.2d at p. 56.](#))

(5a)The jurisdictional aspect of the exhaustion of remedies doctrine is based in part upon the separation of powers of the three branches of government. "The powers of state government are legislative, executive

and judicial." (Cal. Const., art. III, § 3.) Under that tripartite system, the "legislative power of this State is vested in the California Legislature" (Cal. Const., art. IV, § 1); the "supreme executive power of this State is vested in the Governor" (Cal. Const., art. V, § 1); and the "judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." (Cal. Const., art. VI, § 1.) One branch of government may not exercise the powers of another branch. "Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.)

The judicial function is to declare the law and to determine the rights of parties to controversies. (Marin Water etc. Co. v. Railroad Com. (1916) 171 Cal. 706, 711-712 [154 P. 864].) Under the separation of powers clause, the Legislature can neither exercise nor place limitations upon judicial powers. (In re McKimney (1968) 70 Cal.2d 8, 10 [73 Cal.Rptr. 580, 447 P.2d 972].) The legislative function is to enact laws and to appropriate funds. (See Schaezlein v. Cabaniss (1902) 135 Cal. 466, 467 [67 P. 755]; *77 see also Mandel v. Myers (1981) 29 Cal.3d 531, 550 [174 Cal.Rptr. 841, 629 P.2d 935].) Courts, by the same constitutional restriction, cannot interfere with the legislative process. (Santa Clara County v. Superior Court (1949) 33 Cal.2d 552, 559 [203 P.2d 1]; Johnston v. Board of Supervisors (1947) 31 Cal.2d 66, 70 [187 P.2d 686].) And courts cannot compel legislative action. (City Council v. Superior Court (1960) 179 Cal.App.2d 389, 395 [3 Cal.Rptr. 796].) [FN9] (6)An administrative procedure is part of the legislative process and it has been recognized that "'the legislative process remains incomplete' until the administrative remedy is exhausted." (Abelleira v. District Court of Appeal, supra., 17 Cal.2d at p. 295, citing Porter v. Investors Syndicate (1931) 286 U.S. 461, 468 [76 L.Ed. 1226, 1230, 52 S.Ct. 617].) A judicial action before the legislative process has been completed is premature and a court is without jurisdiction until administrative remedies have been exhausted. (Abelleira v. District Court of Appeal, supra.) To hold otherwise would be to permit the courts to engage in an unwarranted interference with the legislative process. (See Santa Clara County v. Superior Court, supra., 33 Cal.2d at p. 556.) As we have recounted at length, the Legislature has provided for a procedure by which local governmental entities may present claims for reimbursement of the costs of state mandates, those claims may be determined, a subvention of funds may be provided, and the result of those proceedings may be reviewed in a judicial proceeding. Unless the

Counties can establish an exception to the rule requiring the exhaustion of administrative remedies, a judicial action without exhausting those remedies must be considered premature.

FN9 While our branches of government are coequal they are not completely independent. While the Legislature cannot exercise judicial functions or deprive the courts of judicial powers, it may regulate procedures and place reasonable restrictions upon judicial functions. (Briggs v. Superior Court (1931) 211 Cal. 619, 627 [297 P. 3], procedure for punishing contempt; Brydonjack v. State Bar (1929) 208 Cal. 439, 443 [281 P. 1018], restrictions on the admission to the practice of law.) And while the Legislature cannot act as a "supercourt," rejecting judicial decisions with which it disagrees (Mandel v. Myers, supra., 29 Cal.3d at p. 552), it may make a law to prospectively abrogate the effect of a judicial decision. (Matter of Coburn (1913) 165 Cal. 202, 210 [131 P. 352].)

(7a)The Counties assert, and the trial court agreed, that it would have been futile for them to have submitted their claims to the administrative process. In support of this contention the Counties presented evidence that out of 24 mandates found by the board and reported to the Legislature, only 8 had been funded in a claims bill. This evidence does not support the contention that it would be futile to submit the claims to the administrative procedure. (8)The futility exception to the requirement of exhaustion of administrative remedies is a very narrow one. "Insofar as a 'futility' exception exists, as when it can be demonstrated that an agency's decision is certain to be adverse (see Ogo Associates v. Torrance (1974) 37 Cal.App.3d 830 [112 Cal.Rptr. 761]), its application is very limited. Thus, exhaustion *78 of administrative remedy is required unless the appellant 'can positively state that the [administrative agency] has declared what its ruling will be in a particular case.'" (Gantner & Mattern Co. v. California E. Com. (1941) 17 Cal.2d 314, 318 [109 P.2d 932], italics added.)" (George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd. (1985) 40 Cal.3d 654, 662 [221 Cal.Rptr. 488, 710 P.2d 288]. See also Doyle v. City of Chino (1981) 177 Cal.App.3d 673, 683 [172 Cal.Rptr. 844]; Mountain View Chamber of Commerce v. City of Mountain View, supra., 77 Cal.App.3d at p. 92.) (7b)The fact

that the Legislature has provided for funding of some of the mandates found by the board, albeit only a portion, precludes the Counties from establishing the futility exception.

The Counties next assert that their remedy before the board (now commission) is inadequate. We disagree. The applicable procedures provide for an evidentiary hearing and decision by the board with the right to judicial review. (§ § 2252, 2253.2, 2253.5; Gov. Code, § § 17551, 17559.) In the event it is determined that a reimbursable mandate exists then a local government claims bill must be introduced to fund such a mandate. (§ 2255, subd. (a); Gov. Code, § 17612, subd. (a).) In the event the Legislature fails to provide an appropriation to fund the mandate then the local government agency may proceed to have a judicial declaration that the mandate is unenforceable. (§ 2255, subd. (c); Gov. Code, § 17612, subd. (b).) In that event the court will have the advantage and benefit of the evidence and record compiled in the administrative proceeding. Pursuant to this procedure the Legislature cannot escape the constitutional requirement that the state reimburse local governments for reimbursable mandates.

(5b) For these reasons we conclude that the trial court erred in concluding that the Counties are not required to exhaust their administrative remedies before resorting to a judicial action with respect to reimbursable state mandates. The determination of a reimbursement claim was within the jurisdiction of the administrative agency, pursuit of the remedy would not result in irreparable harm, the agency could grant an adequate remedy, and the agency's decision was not preordained. The failure to exhaust those remedies was therefore jurisdictional. The judgment with respect to the bills enacted during the 1980-1981 legislative session must be reversed because no claims were filed with respect to those bills. For this reason we need not and do not consider whether those bills contain reimbursable state mandates or whether they pass constitutional muster.

II

With respect to the three bills enacted before 1980 the Counties assert, and the state concedes, that administrative remedies were exhausted by the *79 filing and determination of claims. The bills challenged for which the administrative process was completed included Statutes of 1975, chapter 1275, relating to eminent domain; Statutes of 1976, chapter 1139, relating to determinate sentencing; and Statutes of 1978, chapter 1146, relating to animals. The trial

court found that the Statutes of 1976, chapter 1139, fall within an exception to article XIII B, section 6, which excepts legislation defining a new crime or legislation changing an existing definition of a crime from the reimbursement requirement. The court further determined, however, that Statutes of 1975, chapter 1275, and Statutes of 1978, chapter 1146, did contain reimbursable mandates and that they have become unenforceable due to the Legislature's failure to provide a subvention of funds. The state challenges these findings.

Statutes of 1975, chapter 1275, relating to eminent domain, requires a condemnor to pay for business goodwill when condemning property. (Code Civ. Proc., § 1263.510.) The Counties contend that the payment for business goodwill constitutes a state mandated cost for which reimbursement is required. Pursuant to a claim submitted to the Board of Control, the board agreed with Counties' contention and submitted claims for reimbursement for such expenses in a local government claims bill. The Legislature deleted the claims from the claims bill, and directed that the board shall not accept or submit to the Legislature any more claims pursuant to Statutes of 1975, chapter 1275. (Stats. 1981, ch. 1091, § 3, p. 4193.) The issue is thus now ripe for decision. (§ 2255, subd. (c).)

In resolving this question we agree with and adopt the reasoning of the Court of Appeal in City of Merced v. State of California (1984) 153 Cal.App.3d 777, at page 783 [200 Cal.Rptr. 642]. There, with respect to the same statutory provisions, the court said: "We agree that the Legislature intended for payment of goodwill to be discretionary. (9) The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost." For this reason the trial court erred in finding that Statutes of 1975, chapter 1275 constitutes a reimbursable mandate. [FN10] *80

FN10 We note that we employed analogous reasoning in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182, at pages 196-197 [203 Cal.Rptr. 258]. There the city contended that a state law requiring public employees to be covered by the state

unemployment insurance law constituted a state mandate. The state countered that it was only complying with a federal requirement, did not itself mandate the coverage, and was thus not required to reimburse the city. We noted that federal law provided financial incentives and that it would have been politically unpalatable for the state to refuse to extend coverage to public employees, but nonetheless the decision was optional with the state. This precluded the state from asserting that it was only complying with a federal requirement rather than mandating a new program on local government. The same reasoning applies here: the decision to proceed in eminent domain is optional with the local government. Since the state does not mandate that the local agency incur the costs it claims, the agency is not entitled to reimbursement from the state.

Puglia, P. J., and Sims, J., concurred.

Respondents' petition for review by the Supreme Court was denied April 23, 1986. Mosk, J., was of the opinion that the petition should be granted.

Cal.App.3.Dist.,1986.

Contra Costa County v. State

END OF DOCUMENT

(10) Statutes of 1978, chapter 1146, relates to the destruction of dogs and cats. The aspect of this legislation which the Counties claim constitutes a state mandate imposing costs is the amendment of [Penal Code section 597w](#), which prohibits the use of a high-altitude decompression chamber for the destruction of dogs and cats. The Counties contend that this removes a less expensive option in destroying dogs and cats and thus constitutes a state mandated cost. The Board of Control agreed and submitted a claim for such costs to the Legislature. The Legislature, however, deleted the claim from the local government claims bill and directed the board not accept or submit further claims based upon this provision. (Stats. 1981, ch. 1091, § 3, p. 4193.)

We hold that the trial court erred in finding that Statutes of 1978, chapter 1146, constitutes a reimbursable mandate under [article XIII B, section 6](#). The state, through its penal law, has long prohibited acts which might be described as cruelty to animals. ([Pen. Code, § 596](#) et seq.) The state has determined that the use of high-altitude decompression chambers to destroy dogs and cats constitutes cruelty to animals, and has made it a misdemeanor to do so. ([Pen. Code, § § 597w, 597y.](#)) This is clearly legislation defining a new crime or changing the definition of an existing crime, and as such is expressly excluded from the operation of [article XIII B, section 6](#), by subdivision (b) thereof.

The judgment is reversed.



COUNTY OF LOS ANGELES et al., Plaintiffs and
 Appellants,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents.
 CITY OF SONOMA et al., Plaintiffs and Appellants,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents

L.A. No. 32106.

Supreme Court of California

Jan 2, 1987.

SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that [Cal. Const., art. XIII B, § 6](#), requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before

the board. The court held that when the voters adopted [art. XIII B, § 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by [art. XIII B, § 6](#). Finally, the court held that no pro tanto repeal of [Cal. Const., art. XIV, § 4](#) (workers' compensation), was intended or made necessary by *47 the adoption of [art. XIII B, § 6](#). (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.

When the voters adopted [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2) Statutes § 18--Repeal--Effect--"Increased Level of Service."

The statutory definition of the phrase "increased level of service," within the meaning of [Rev. & Tax. Code, § 2207](#), subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature, by deleting an express provision of a statute, intended a substantial change in the law.

[See **Am.Jur.2d**, Statutes, § 384.]

(3) Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4) Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."

The word "program," as used in [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on *48 local governments and do not apply generally to all residents and entities in the state.

(5) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.

The provisions of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of [art. XIII B, § 6](#). Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See **Cal.Jur.3d**, [State of California, § 78](#).]

(6) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable

Conflicts.

Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.

The goals of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of [art. XIII B, § 6](#), did not effect a pro tanto repeal of [Cal. Const., art. XIV, § 4](#), which gives the Legislature plenary power over workers' compensation. *49

COUNSEL

De Witt W. Clinton, County Counsel, Paula A. Snyder, Senior Deputy County Counsel, Edward G. Pozorski, Deputy County Counsel, John W. Witt, City Attorney, Kenneth K. Y. So, Deputy City Attorney, William D. Ross, Diana P. Scott, Ross & Scott and Rogers & Wells for Plaintiffs and Appellants.

James K. Hahn, City Attorney (Los Angeles), Thomas C. Bonaventura and Richard Dawson, Assistant City Attorneys, and Patricia V. Tubert, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, for Defendants and Respondents.

Laurence Gold, Fred H. Altshuler, Marsha S. Berzon, Gay C. Danforth, Altshuler & Berzon, Charles P. Scully II, Donald C. Carroll, Peter Weiner, Heller, Ehrman, White & McAuliffe, Donald C. Green, Terrence S. Terauchi, Manatt, Phelps, Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted [article XIII B, section 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or *50 increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by [section 6](#).

We recognize also the potential conflict between [article XIII B](#) and the grant of plenary power over workers' compensation bestowed upon the Legislature by [section 4 of article XIV](#), but in accord with established rules of construction our construction of [article XIII B, section 6](#), harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in [section 6](#) (hereafter [section 6](#)): "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. [FN1]

FN1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ... The one ballot argument which made reference to [section 6](#), referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which *51 employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of [Labor Code sections 4453, 4453.1](#) and [4460](#) increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from \$231 per week to \$262.50 per week. The amendment of [section 4702 of the Labor Code](#) increased certain death benefits from \$55,000 to \$75,000. No

appropriation for increased state-mandated costs was made in this legislation. [FN2]

FN2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either [Revenue and Taxation Code section 2231](#), or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of \$510 on which to base benefits, an unspecified appropriation was included.

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to [Revenue and Taxation Code section 2207](#). [FN3] They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

FN3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly *52 excepted from the requirement of state reimbursement in [section 6](#) the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service " in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from \$73.50 to \$168, and the maximum from \$262.50 to \$336. For permanent partial disability the weekly wage was raised from a minimum of \$45 to \$105, and from a maximum of \$105 to \$210, in each case for injuries occurring on or after January 1, 1984. ([Lab. Code, § 4453](#).) A \$10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed ([Lab. Code, § 4553](#)), and the maximum death benefit was raised from \$75,000 to \$85,000 for deaths in 1983, and to \$95,000 for deaths on or after January 1, 1984. ([Lab. Code, § 4702](#).)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding [section 6 of Article XIII B of the California Constitution](#) and [section 2231](#) ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.) [FN4]

FN4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement

available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in [Revenue and Taxation Code section 2207](#), subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or *53 [section 6](#). The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings ([Lab. Code, § 3202.5](#)); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine ([Lab. Code, § 3601- 3602](#)); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. ([Lab. Code, § 4551](#)).

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of

service" within the meaning of [section 6](#), or are an "increased level of service" [FN5] described in subdivision (a) of [Revenue and Taxation Code section 2207](#). The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of [section 6](#) is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

FN5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in [section 2231](#), subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of [section 2231](#) in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in [article XIII B](#) to readopt the *54 definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].) [FN6] On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

FN6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either [section 6](#), adopted by the electorate in the prior year, or of [Revenue and Taxation Code section 2207](#), subdivision (a) enacted in 1975. (Cf. *California Employment Stabilization Co. v. Payne* (1947) 31 Cal.2d

[210, 213-214 \[187 P.2d 702\].](#) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting [section 6](#).

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. [FN7]

FN7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See [Code Civ. Proc. § 1094.5](#), subd. (f).)

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of [section 6](#). Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of [section 6](#) in the ballot materials.

A statutory requirement of state reimbursement was in effect when [section 6](#) was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition

of "increased level of service," providing only: "Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." ([Rev. & Tax. Code § 2207](#).) As noted, however, the definition of that term which had been *55 included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when [Revenue and Taxation Code section 2231](#), which had replaced section 2164.3 in 1973, was repealed and a new [section 2231](#) enacted. (Stats. 1975, ch. 486, § 6 & 7, p. 999.) [FN8] Prior to repeal, Revenue and Taxation Code section 2164.3, and later [section 2231](#), after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " 'Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

FN8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to [Revenue and Taxation Code sections 2218-2218.54](#) had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of [Revenue and Taxation Code section 2231](#), subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in [Section 2207](#)" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." ([County of Orange v. Flournoy \(1974\) 42 Cal.App.3d 908, 913 \[117 Cal.Rptr. 224\].](#))

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the

Legislature, in enacting [section 2207](#), explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." ([Lake Forest Community Assn. v. County of Orange \(1978\) 86 Cal.App.3d 394, 402 \[150 Cal.Rptr. 286\]](#); see also [Eu v. Chacon, supra, 16 Cal.3d 465, 470.](#)) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of [section 2207](#). If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of [section 6](#) and the electorate are presumed to have been *56 aware, we may not conclude that an intent existed to incorporate the repealed definition into [section 6](#).

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted [article XIII B](#) in 1979. To determine this intent, we must look to the language of the provision itself. ([ITT World Communications, Inc. v. City and County of San Francisco \(1985\) 37 Cal.3d 859, 866 \[210 Cal.Rptr. 226, 693 P.2d 811\].](#)) In [section 6](#), the electorate commands that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither [section 6](#) nor the current statutory reimbursement scheme.

(4) Looking at the language of [section 6](#) then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in

conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in [article XIII B](#). What programs then did the electorate have in mind when [section 6](#) was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term - programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of [section 6](#) in [article XIII B](#) was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of [article XIII B](#) explained [section 6](#) to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying [section 6](#) was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not *57 for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of [section 6](#) is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of [section 6](#), the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. [Fuentes v. Workers' Comp. Appeals Bd. \(1976\) 16 Cal.3d 1, 7 \[128 Cal.Rptr. 673, 547 P.2d 449\]](#); [Big Sur Properties v. Mott \(1976\) 63 Cal.App.3d 99, 105](#)

[132 Cal.Rptr. 835.] Nothing in the history of [article XIII B](#) that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were [section 6](#) construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by [article XIII B](#). ([Rev. & Tax. Code, § § 2255](#), subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe [section 6](#) as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote. [FN9] Certainly no such intent is reflected in the language or history of [article XIII B](#) or [section 6](#).

FN9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See [Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization](#) (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

(5) We conclude therefore that [section 6](#) has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation *58 benefits that employees of private individuals or organizations receive. [FN10] Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental

to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See [Lab. Code, § 3201](#) et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of [section 6](#).

FN10 The Court of Appeal reached a different conclusion in [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

IV

(6) Our construction of [section 6](#) is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. ([Clean Air Constituency v. California State Air Resources Bd.](#) (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; [Serrano v. Priest](#) (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; [Select Base Materials v. Board of Equal.](#) (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" ([Legislature v. Deukmejian](#) (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because [article XIV, section 4](#), [FN11] gives the Legislature "plenary power, unlimited by any provision of *59 this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, [section 6](#), as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the

existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between [section 6](#) and the plenary power over workers' compensation granted to the Legislature by [article XIV, section 4](#) is apparent.

FN11 [Section 4](#): "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the

administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

The County of Los Angeles, while recognizing the impact of [section 6](#) on the Legislature's power over workers' compensation, argues that the "plenary power" granted by [article XIV, section 4](#), is power over the substance of workers' compensation legislation, and that this power would be unaffected by [article XIII B](#) if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural *60 limitations on the Legislature, such as the "single

subject rule" (art. IV, § 9), as to which [article XIV, section 4](#), has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If [section 6](#) were applicable, therefore, [article XIII B](#) would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed [article XIII B](#) would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of [article XIV, section 4](#), or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of [section 6](#) permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as [section 6](#) to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in [Hustedt v. Workers' Comp. Appeals Bd.](#) (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, [article XIV, section 4](#), was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, [article XIV, section 4](#), would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of [article XIV, section 4](#), granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because [article XIV, section 4](#), did not give the Legislature the authority to enact the statute. [Article XIV, section 4](#), did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a

complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of [article XIV, section 4](#) 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that *61 amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of [article XIV, section 4](#) are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power - the disciplining of attorneys - that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd.*, *supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of [article XIV, section 4](#), and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of [article XIV, section 4](#), was intended or made necessary here by the adoption of [section 6](#). The goals of [article XIII B](#), of which [section 6](#) is a part, were to protect residents from excessive taxation and government spending. (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) [Section 6](#) had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency

the expense of providing governmental services.

Therefore, since the objectives of [article XIII B](#) and [section 6](#) can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, [section 6](#) did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in *62 benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that [section 6](#) has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal - whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither [article XIII B, section 6, of the Constitution](#)

nor [Revenue and Taxation Code sections 2207](#) and [2231](#) require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of [section 2231](#), subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living *63 adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. *64

Cal., 1987.

Los Angeles County v. State

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CARMEL VALLEY FIRE PROTECTION
DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants
and Appellants.
RINCON DEL DIABLO MUNICIPAL WATER
DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants
and Appellants.
COUNTY OF LOS ANGELES, Plaintiff and
Respondent,
v.
THE STATE OF CALIFORNIA et al., Defendants
and Appellants.

No. B006078., No. B011941., No. B011942.

Court of Appeal, Second District, Division 5,
California.

Feb 19, 1987.

SUMMARY

The trial court, in separate proceedings brought by three counties against the state for reimbursement of funds expended by the counties in complying with a state order to provide protective clothing and equipment for county fire fighters, issued writs of mandate compelling the state to reimburse the counties. Previously, the counties had filed test claims with the State Board of Control for reimbursement of similar expenses. The board determined that there was a state mandate and the counties should be reimbursed. The state did not seek judicial review of the board's decision. Thereafter, a local government claims bill, Sen. Bill No. 1261 (Stats. 1981, ch. 1090, p. 4191) was introduced to provide appropriations to pay some of the counties' claims for the state-mandated costs. After various amendments, the legislation was enacted into law without the appropriations. The counties then sought reimbursement by filing petitions for writs of mandate and complaints for declaratory relief. (Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.) *522

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#)) Estoppel and Waiver § 23--Waiver--Trial and Appeal--Failure to Seek Judicial Review of Administrative Decision--Waiver of Right to Contest Findings.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

(2) Estoppel and Waiver § 19--Waiver--Requisites.

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable *523 belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

[See [Cal.Jur.3d, Estoppel and Waiver § 21](#); [Am.Jur.2d, Estoppel and Waiver § 154](#).]

(3a, 3b, 3c, 3d) Judgments § 81--Res Judicata--Collateral Estoppel--County's Action for Reimbursement of State-mandated Costs--Findings of State Board of Control.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

(4) Judgments § 81--Res Judicata--Collateral Estoppel--Elements.

In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

(5) Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Privity--Governmental Agents.

The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

(6) Judgments § 96--Res Judicata--Collateral Estoppel--Matters Concluded-- Questions of Law.

A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and

where holding the judgment to be conclusive will not result in an injustice.

(7) State of California § 11--Fiscal Matters--Reimbursement to County for State-mandated Costs--New Programs.

A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#), is one which carries out the governmental function of providing services *524 to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

(8) State of California § 7--Actions--Reimbursement of County Funds for State-mandated Costs--New Programs.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

(9) Constitutional Law § 37--Doctrine of Separation of Powers--Violations of Doctrine--Judicial Order of Appropriation.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

(10) Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power and Its Limits--Order Directing Treasurer to Pay on Already Appropriated Funds.

Once funds have been appropriated by legislative

action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

(11) State of California § 12--Fiscal Matters--Appropriations-- Reimbursement to County for State-mandated Costs.

Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement *525 by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

(12a, 12b) Fires and Fire Districts § 2--Statutes and Ordinances--County Compliance With State Executive Order to Provide Protective Equipment--Federal Mandate.

A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

(13) Statutes § 20--Construction--Judicial Function--Legislative Declarations.

The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

(14a, 14b) Statutes § 10--Title and Subject Matter--Single Subject Rule.

In a proceeding brought by a county for a writ of

mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit. 8, § § 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.

(15) Statutes § 10--Title and Subject Matter--Single Subject Rule.

The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's *526 title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

(16) Statutes § 5--Operation and Effect--Retroactivity--Reimbursement to County for State-mandated Costs.

The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207 and former Rev. & Tax. Code, § 2231, unavailable to a county seeking reimbursement (Cal. Const., art. XIII B, § 6) for expenditures made in purchasing state- required protective clothing and equipment for county fire fighters (Cal. Admin. Code, tit. 8, § § 3401-3409), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.

(17) State of California § 13--Fiscal Matters--Limitations on Disposal-- Reimbursement to Counties for State-mandated Costs.

The budget control language of § 28.40 of the 1981

Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

(18) Constitutional Law § 4--Legislative Power to Create Workers' Compensation System--Effect on County's Right to Reimbursement.

[Cal. Const., art. XIV, § 4](#), which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

(19) Constitutional Law § 7--Mandatory, Directory, and Self-executing Provisions--Subvention Provisions--County Reimbursement for State-mandated Costs.

The subvention provisions of [Cal. Const., art. XIII B, § 6](#), operate so as to require the state to reimburse counties for *527 state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment.

(20) Mandamus and Prohibition § 5--Mandamus--Conditions Affecting Issuance--Exhaustion of Administrative Remedies--County Reimbursement for State-mandated Costs.

A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

(21) Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.

A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

(22a, 22b) State of California § 7--Actions--Reimbursement to County for State-mandated Costs--County's Right to Offset Fines and Forfeitures Due to State.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

(23) Equity § 5--Scope and Types of Relief--Offset.

The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in [Code Civ. Proc., § 431.70](#) (limited to cross-demands for money).

(24) State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Use of Statutory Offset Authority.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state *528 order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority ([Gov. Code, § 12419.5](#)) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

(25) State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Right to Revert or Dissipate Undistributed Appropriations.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by [Gov. Code, § 16304.1](#), from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise

dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

(26) Parties § 2--Indispensable Parties--County Auditor Controller--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief

(27) Parties § 2--Indispensable Parties--Fines and Forfeitures--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

(28) Interest § 4--Interest on Judgments--County Action for Reimbursement of State-mandated Costs--State Reliance on Invalid Statute.

An *529 invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

(29) Appellate Review § 127--Review--Scope and

Extent--Interpretation of Statutes.

An appellate court is not limited by the interpretation of statutes given by the trial court.

(30) Appellate Review § 162--Determination of Disposition of Cause-- Modification--Action Against State--Appropriation.

In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

COUNSEL

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together *530 under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1. [FN1] For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

FN1 2d Civ. B006078: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair

Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in [Revenue and Taxation Code section 2211](#).

Appeal In Case No. 2 Civil B011942

(County of Los Angeles Case)

Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by [title 8, California Administrative Code, sections 3401-3409](#), enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service." County relies on [Revenue and Taxation Code section 2207](#) [FN2] and former ***531** section 2231, [FN3] and [California Constitution, article XIII B, section 6](#) [FN4] to support its claim.

FN2 The pertinent parts of [Revenue and Taxation Code section 2207](#) provide: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following" [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or a n increased level of service of an existing program: [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973 ..."

FN3 The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in [Section 2207](#)." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by [Government Code section 17561](#). We will refer to the earlier code section.

FN4 The pertinent parts of [section 6, article XIII B of the California Constitution](#), enacted by initiative measure, provide: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶ ¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980. [FN5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a

state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

FN5 County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. ([Gov. Code, § § 17525, 17630.](#))

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law. [FN6]

FN6 The final legislation did include appropriations for other local agencies on other types of approved claims.

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate ([Code Civ. Proc., § 1085](#)) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of *532 February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below. [FN7] *533

FN7 "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the

reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with] this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [*sic*] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [*sic*] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of \$307,685 in this case, together with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in [Penal Code Sections 1463.02, 1463.03, 14\[6\]3.5\[a\], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.](#)

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401 through 3409](#) as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401 through 3409](#) were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall

issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of [Title 8, California Administrative Code Sections 3401 through 3409](#) subsequent to fiscal year 1979-80.

....."

"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of [Title 8, California Administrative Code Sections 3401 through 3409.](#)"

Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

Discussion

I

Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state" in either complying with a "new program" or providing "an increased level of service of an existing program." [FN8] State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46 \[233 Cal.Rptr. 38, 729 P.2d 202\].](#) *534

FN8 This language is taken from [Revenue and Taxation Code section 2207](#) and former section 2231. [Article XIII B, section 6](#) refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of [article XIII B, section 6](#).

A. Waiver

(1a) We initially conclude that State has waived its right to contest the Board's findings. (2) Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. ([Medico- Dental etc. Co. v. Horton & Converse](#) (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; [Loughan v. Harger-Haldeman](#) (1960) 184 Cal.App.2d 495, 502-503 [7 Cal.Rptr. 581].) A right that is waived is lost forever. ([L.A. City Sch. Dist. v. Landier Inv. Co.](#) (1960) 177 Cal.App.2d 744, 752 [2 Cal.Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. ([People v. Murphy](#) (1962) 207 Cal.App.2d 885, 888 [24 Cal.Rptr. 803].)

(1b) State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that November 20, 1979 decision ([Code Civ. Proc., § 1094.5](#)) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. ([Green v. Obledo](#) (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256]; [Code Civ. Proc., § 338](#), subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax.

Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. Administrative Collateral Estoppel

(3a) We next conclude that State is collaterally estopped from attacking the Board's findings. (4) Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must *535 be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. ([People v. Sims](#) (1982) 32 Cal.3d 468, 484 [186 Cal.Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. ([Id.](#) at p. 479.) All of the elements of administrative collateral estoppel are present here.

(3b) The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. ([County of Sacramento v. Loeb](#) (1984) 160 Cal.App.3d 446, 452 [206 Cal.Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. ([Gov. Code, § 13911](#).) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in

this case were fully litigated before the Board. A representative of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5)"[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal.Rptr. 657, 380 P.2d 97].) As we stated in our introduction of the parties in this case, the party *536 known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781 [200 Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here. (6)A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal.App.3d 274, 286-287 [93 Cal.Rptr. 907]; *Rest.2d Judgments, § 28, p. 273.*) [FN9]

FN9 As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

(3d)Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum-Board or court-the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement" (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679 [159 Cal.Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally *537 estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. Executive Orders-A "New Program" Under Article XIII B, Section 6

(7)The recent decision by our Supreme Court in *County of Los Angeles v. State of California, supra.*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6. [FN10] We conclude that they are.

FN10 State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of

waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

In *State of California*, the Court concluded that the term "program" has two alternative meanings: "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

(8)First, fire protection is a peculiarly governmental function. (*County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal.Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function. [FN11] *538

FN11 County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in [title 8, California Administrative Code section 3402](#), which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

The second, and alternative, prong of the *State of*

California definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

State of California only defined the scope of the word "program" as used in [California Constitution, article XIII B, section 6](#). We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (*County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

Issue of Whether Court Orders Exceeded Its Jurisdiction

A. The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine

(9)State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. ([Cal. Const., art. III, § 3](#); art. XVI, § 7; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].) [FN12] State *539 observes (and correctly so) that the relevant constitutional ([art. XIII B, § 6](#)) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures.

(See [City of Sacramento v. California State Legislature](#) (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims ([City & County of S. F. v. Kuchel](#) (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

FN12 [Article III, section 3 of the California Constitution](#) provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

[Article XVI, section 7 of the California Constitution](#) provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

State further argues that the judiciary's ability to reach an existing agency- support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. ([Committee to Defend Reproductive Rights v. Cory](#) (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. ([Mandel v. Myers, supra., 29 Cal.3d at p. 544.](#)) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate ([Code Civ. Proc., § 1085](#)) is the correct method of compelling State to perform a clear and present ministerial legal obligation. ([County of Sacramento v. Loeb, supra., 160 Cal.App.3d at pp. 451-452.](#)) The ministerial obligation here is contained in [California Constitution, article XIII B, section 6](#) and in [Revenue and Taxation Code section 2207](#) and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing

appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "*appropriated*" by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10)By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures *\$540 from such funds. [Citations.]" ([Mandel v. Myers, supra., 29 Cal.3d at p. 540.](#))

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." ([Id. at p. 542.](#)) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. ([Id. at pp. 543-544.](#))

Another illustration of this principle is found in [Serrano v. Priest](#) (1982) 131 Cal.App.3d 188 [182

[Cal.Rptr. 3871](#). Plaintiffs in that case secured a judgment against the State of California for \$800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the \$800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11) State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in [Mandel v. Myers, supra., 29 Cal.3d at pp. 543-544](#). Likewise, in **541 Committee to Defend Reproductive Rights v. Cory, supra., 132 Cal.App.3d at pp. 857- 858*, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on" The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.) **542*

Again, in 1974, the Legislature stated: "Notwithstanding [Section 2231 of the Revenue and Taxation Code](#), there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... [Sections](#)

[3401 to 3409, inclusive, of Title 8 of the California Administrative Code.](#)" (Stats. 1981, ch. 1090, § 3, p. 4193.) [FN13]

FN13 When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a) State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in [City of Sacramento v. State of California \(1984\) 156 Cal.App.3d 182, 196-197 \[203 Cal.Rptr. 258\]](#) disapproved on other grounds in [County of Los Angeles v. State of California, supra., 43 Cal.3d at p. 58, fn. 10](#), the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or *543 new programs. However, under [Revenue and Taxation Code section 2271](#), "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the California Constitution through the initiative process. [Article XIII B, section](#)

6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of [Revenue and Taxation Code section 2207](#) and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended [Revenue and Taxation Code section 2206](#) to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13)(See fn. 14.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate. [FN14]

FN14 We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. ([City of Sacramento v. State of California, supra., 156 Cal.App.3d at pp. 196-197.](#))

(12b) Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not

have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than *544 federal OSHA standards, are applicable to fire departments in that state" This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not federally mandated.

(14a)The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule. [FN15] This legislative restriction purported to make the reimbursement provisions of [Revenue and Taxation Code section 2207](#) and former section 2231 unavailable to County.

FN15 [Article IV, section 9 of the California Constitution](#) reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

(15)The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. ([Planned Parenthood Affiliates v. Swoap](#) (1985) 173 Cal.App.3d 1187, 1196 [219 Cal.Rptr. 664].)

However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. ([Metropolitan Water Dist. v. Marquardt](#) (1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28].)

(14b)The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction *545 alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have been made in connection with the enactment of a budget bill are appropriate here. "[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. 'History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" ([Planned Parenthood Affiliates v. Swoap, supra.](#), 173 Cal.App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. ([Association for Retarded Citizens v. Department of Developmental Services](#) (1985) 38 Cal.3d 384, 394 [211 Cal.Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

(16)The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's

right to reimbursement for debts incurred in prior years. This legislative technique was condemned in County of Sacramento v. Loeb, supra., 160 Cal.App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred ... 'Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.'" (*Id.* at p. 459, quoting Robinson v. Pediatric Affiliates Medical Group, Inc. (1979) 98 Cal.App.3d 907, 912 [159 Cal.Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims. *546

(17) Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00 [FN16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

FN16 Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in section 2209 of the Revenue and Taxation Code or subject to the provisions of section 2231 of the Revenue and Taxation Code, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made,

to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (Association for Retarded Citizens v. Department of Developmental Services, supra., 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement. *547

*C. The Legislature's Plenary Power to Regulate
Worker Safety Does Not Affect
the Right to Reimbursement*

(18) State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring

local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

[Article XIV, section 4](#) concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by [Revenue and Taxation Code section 2207](#) and former section 2231, and [article XIII B, section 6](#). Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see [County of Los Angeles v. State of California, supra., 43 Cal.3d 46](#)), they do not conflict with [article XIV, section 4](#).

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of [Revenue and Taxation Code section 2207](#) and former section 2231. Likewise, [article XIII B, section 6](#) does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. *Pre-1980 Claims Are Reimbursable Under [Article XIII B, Section 6](#), Effective July 1, 1980*

(19)State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of [article XIII B, section 6](#), they fall within a "window period" of nonreimbursement. This assertion emanates from [section 6](#), subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in [City of Sacramento v. State of California, supra., 156 Cal.App.3d at p. 182](#) on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation *548 and upon a prior published opinion of the Attorney General, the court interpreted [section 6](#), subdivision (c) as follows: "[T]he Legislature may reimburse mandates enacted prior to January 1, 1975, and must reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of

[article XIII B](#) (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. *Claims Under [Revenue and Taxation Code Section 2207](#) and Former Section 2231 Are Not Time-barred*

(20)State collaterally asserts that to the extent County bases its claims on [Revenue and Taxation Code section 2207](#) and former section 2231, they are barred by [Code of Civil Procedure sections 335](#) and [338](#), subdivision 1. This omnibus challenge to the order directing payment has no merit.

[Code of Civil Procedure section 335](#) is a general introductory section to the statute of limitations for all matters except recovery of real property. [Code of Civil Procedure section 338](#), subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. ([County of Contra Costa v. State of California \(1986\) 177 Cal.App.3d 62, 77 \[222 Cal.Rptr. 750\]](#).) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period. [FN17] ([Lerner v. Los Angeles City Board of Education, supra., 59 Cal.2d at p. 398.](#)) *549

FN17 Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. ([Ventura County](#)

[Employees' Retirement Association v. Pope \(1978\) 87 Cal.App.3d 938, 956 \[151 Cal.Rptr. 695\].](#)

F. [Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order](#)

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in [Government Code section 17612](#), subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that [Government Code section 17612](#), subdivision (b) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21) A party is not required to exhaust a remedy that was not in existence at the time the action was filed. ([Ross v. Superior Court \(1977\) 19 Cal.3d 899, 912, fn. 9 \[141 Cal.Rptr. 133, 569 P.2d 727\].](#)) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. ([Serrano v. Priest, supra., 131 Cal.App.3d at p. 201.](#))

Also, this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override [article XIII B, section 6](#) and [Revenue and Taxation Code section 2207](#) and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is

under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. ([Code Civ. Proc., § 1085.](#)) [FN18] *550

FN18 We leave undecided the question of whether this type of legislation could ever be held to override [California Constitution, article XIII B, section 6](#). The Constitution of the State is supreme. Any statute in conflict therewith is invalid. ([County of Los Angeles v. Payne, supra., 8 Cal.2d at p. 574.](#)) Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

G. [The Court's Order Properly Allows County the Right of Offset](#)

(22a) As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, ante.) The fines and forfeitures are those found in [Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5.](#) [FN19]

FN19 At oral argument, County conceded that the order authorizing offset of [Fish and Game Code section 13100](#) fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. ([Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 \(1952\).](#))

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do

not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23)The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Kruger v. Wells Fargo Bank (1974)* 11 Cal.3d 352, 362 [113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (*Code Civ. Proc., § 431.70*) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In *County of Sacramento v. Lackner (1979)* 97 Cal.App.3d 576[159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the 'submission, approval and enforcement of budgets....'" (*Id. at p. 592*, quoting *Cal. Const., art. IV, § 12*, subd. (e).)

(22b)The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified *551 fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. State's Use of its Statutory Offset Authority Was Properly Enjoined

(24)State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.) [FN20] This order complemented that portion of the order discussed, *infra*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

FN20 [Government Code section 12419.5](#) provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler v. State of California (1982)* 134 Cal.App.3d 973, 975- 976 [185 Cal.Rptr. 49].)

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California (1984)* 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

I. The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper

(25)State continues that the order (fn. 7, ¶ 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates [Government Code section 16304.1](#). [FN21] This section reverts undisbursed *552 balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb, supra*, 160 Cal.App.3d at pp. 456- 457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

FN21 [Government Code section 16304.1](#)

provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years...following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. The Auditor Controller and the Specified Funds Are Not Indispensable Parties

(26, 27)State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction. [FN22] State cites only the general statutory definition of an indispensable party ([Code Civ. Proc., § 389](#)) to support this assertion.

FN22 [Code of Civil Procedure section 389](#), subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of

jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

The Auditor Controller is an officer of the County and is subject to the *553 direction and control of the County board of supervisors. ([Gov. Code, § 24000](#), subs. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. County is Entitled to Interest

(28)State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

[Civil Code section 3287](#), subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation...." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state...or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February

12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under [Civil Code section 3287](#), subdivision (a)." ([Olson v. Cory \(1983\) 35 Cal.3d 390, 404 \[197 Cal.Rptr. 843, 673 P.2d 720\]](#).)

Appeal in Case No. 2 Civil B011941
(Rincon et al. Case)

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter. *554

County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement in the amount of \$39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined. [FN23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but

one conclusion, and mandamus properly lies. ([County of Sacramento v. Loeb, supra., 160 Cal.App.3d at p. 453.](#)) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid. [FN24]

FN23 Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

FN24 Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

Appeal in Case No. 2 Civil B006078
(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here. *555

On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling \$159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the

reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as \$159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of [Revenue and Taxation Code section 2207](#) and former section 2231. In doing so, the court did not have the benefit of the decision in [City of Sacramento v. State of California, supra., 156 Cal.App.3d at p. 182](#). [FN25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to [article XIII B, section 6 of the California Constitution](#), but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by [article XIII B, section 6](#). *556

FN25 The decision in *City of Sacramento, supra.*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

(29) State is correct in contending that an appellate court is not limited by the interpretation of statutes

given by the trial court. ([City of Merced v. State of California, supra., 153 Cal.App.3d at p. 781](#).) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. ([Cal. Const., art. XIII B, § 6, subd. \(c\)](#).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See [Code Civ. Proc., § 389](#); fn. 22, *ante*.)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra.*, which we rejected as meritless. The department is part of the State of [California. \(Lab. Code, § 50.\)](#) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. ([People v. Sims, supra., 32 Cal.3d at p. 487](#).)

[Ross v. Superior Court, supra., 19 Cal.3d at p. 899](#) demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, *557 who were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not

collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still

available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985- 1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano v. Priest, supra.*, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	\$94,673,000	\$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

(30)An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest, supra.*, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments. *558

Disposition

2d Civ. B011942 (County of Los Angeles Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers

identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B011941 (Rincon et al. Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B006078 (Carmel Valley et al. Case)

The judgment is modified as follows: *559

(1) The following sentences are added to paragraph 2: "The reimbursement amounts total \$159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P. J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellant's petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein. *560

Cal.App.2.Dist.,1987.

Carmel Valley Fire Protection Dist. v. State

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C

DIVISION OF OCCUPATIONAL SAFETY AND
 HEALTH, Plaintiff and Respondent,

v.

STATE BOARD OF CONTROL, Defendant and
 Respondent; ARCADE FIRE DISTRICT, Real
 Party in Interest and Appellant.

No. C000006.

Court of Appeal, Third District, California.

Feb 19, 1987.

SUMMARY

The trial court granted the petition of the State Division of Occupational Safety and Health challenging a decision of the State Board of Control approving the claim of a local fire control district for reimbursement, under [Rev. & Tax. Code, § 2207](#) (state reimbursement of state-mandated local costs), for expenses incurred in maintaining additional firefighters on duty at fires requiring the use of artificial breathing devices pursuant to a regulation delineating standby and rescue procedures. The district construed the regulation as requiring, in addition to the "buddy system" pairs of firefighters with respirators it employed as a standard firefighting practice, a third standby firefighter prepared to undertake rescue of the others, if necessary. The division took the position that the regulation merely passed on nonreimbursable standards mandated by the federal government. (Superior Court of Sacramento County, No. 299306, Roger K. Warren, Judge.)

The Court of Appeal affirmed, holding that [Rev. & Tax. Code, § 2207](#), subd. (f), which did not become effective until after the fiscal years for which reimbursement was sought, was not intended to be retroactive and could not support the claim. Turning to [Rev. & Tax. Code, § 2207](#), subd. (c), which was in effect during those fiscal years, the court deferred to the division's interpretation of the regulation, concluding that, so construed, it did not require the district to increase its respirator-equipped manpower; rather, it contemplated that one firefighter so equipped be maintained on standby, whether two

"buddies" or a single firefighter entered the hazardous atmospheres to which the regulation applied. Thus, the court held that the district sought reimbursement for its own interpretation that the "buddy system" was a minimum standard to which the standby requirement had been added, not an express state mandate that three firefighters be deployed at every hazardous-atmosphere fire. (Opinion by Puglia, P. J., with Regan and Sparks, JJ., concurring.) *795

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 74--Mandamus--Review--Administrative Regulation.

The interpretation of an administrative regulation, like the interpretation of a statute, is a question of law ultimately to be resolved by the courts. Where the substantial evidence test applies, the superior court exercises an essentially appellate function in determining whether the administrative findings are supported by substantial evidence and the proceedings are free from legal error. The scope of the Court of Appeal's review is coextensive with that of the superior court.

(2) Fires and Fire Districts § 2--Statutes and Ordinances--Occupational Safety and Health--Reimbursement of State-mandated Local Costs.

The 1974 legislative finding of federal mandate underlying the state Occupational Safety and Health Act ([Lab. Code, § 6300](#) et seq.) has been superseded by former [Rev. & Tax. Code, § 2253](#), subds. (b) and (c), as amended, and does not in and of itself preclude an administrative finding that there is no federal mandate preventing reimbursement to a local fire district for state-mandated costs.

(3a, 3b) Fires and Fire Districts § 2--Statutes and Ordinances--Health and Safety Regulations--State-mandated Local Costs--Federally Mandated Costs.

Because the state was not required to promulgate a health and safety regulation requiring certain manpower and equipment minimums for firefighting in hazardous atmospheres in order to comply with federal law, the exception for federally mandated costs, to the requirement that the state reimburse local

agencies for costs incurred by compliance with state-mandated standards, did not apply to a local fire district's claim for reimbursement for the costs of compliance with the state regulation.

(4) Labor § 6--Regulation of Working Conditions--Occupational Safety and Health Regulations--Federal Preemption.

Under § 667 of the federal Occupational Safety and Health Act (OSHA) ([29 U.S.C. § 651](#) et seq.), California is preempted from regulating matters covered by the federal OSHA standards unless the state has adopted a federally approved plan. The federal law does not, however, confer federal power upon a state that has adopted such a plan. It merely removes federal preemption so that the state may exercise its own sovereign powers over occupational safety and health. There is no indication in the language of the act that a state with an approved plan may not establish more stringent standards than those developed by the federal OSHA, or grant *796 to its own occupational safety and health agency more extensive jurisdiction than that enjoyed by the federal OSHA.

[See [Cal.Jur.3d, Labor, § 46](#) et seq.; [Am.Jur.2d, Plant and Job Safety, § 131](#) et seq.]

(5) State of California § 11--Fiscal Matters--Reimbursement of Local Governments--Reimbursement for Increased Program Levels.

State regulations that do not increase program levels above those required prior to January 1, 1973, do not result in "costs mandated by the state" within the meaning of [Rev. & Tax. Code, § 2207](#), subd. (c), which requires that the state reimburse local governments for costs incurred in meeting state mandates.

(6) State of California § 11--Fiscal Matters--Reimbursement of Local Governments for State-mandated Costs--Statute--Construction--Retroactivity of Amendments.

The 1980 amendment to [Rev. & Tax. Code, § 2207](#) (reimbursement of local agency for "costs mandated by the state"), was substantive in nature, rather than procedural or remedial, since it significantly expanded the situations in which a claimant could seek reimbursement for such costs. Nothing in the legislative history of the 1980 amendment expressed a legislative intent that the amendment's provisions be applied retroactively. A statute affecting substantive rights is presumed not to have retrospective application unless the courts can clearly discern from the express language of the statute or

extrinsic interpretive aids that the Legislature intended otherwise.

(7) State of California § 11--Fiscal Matters--Reimbursement of Local Governments--State-mandated Costs--Retroactivity.

[Rev. & Tax. Code, § 2207](#), subd. (f), which provides for state reimbursement of local governmental agencies for costs incurred as a result of enactments after January 1, 1973, that remove options previously available to such agencies, thereby increasing program or service levels, or that prohibit specific activities with the result that such agencies use more costly alternatives, applies prospectively only to costs incurred by local agencies after its effective date, by Jan. 1, 1981. The statute cannot support a claim for reimbursement arising before its effective date.

(8) Statutes § 31--Construction--Language--Words and Phrases--Singular and Plural.

As a general rule of construction, words used in the singular include the plural and vice versa.

(9) Statutes § 44--Construction--Aids--Contemporaneous Administrative Construction--Ambiguous Statutes.

In view of inherent ambiguities *797 in a regulation of the state Division of Occupational Safety and Health (Division) delineating firefighting manpower and equipment safety and health standards, the interpretation given the regulation by the Division, which is charged with its enforcement, was entitled to great weight. Thus, it was proper to defer to that agency's interpretation that the regulation requires the presence of only two persons using respiratory equipment in work places involving hazardous atmospheres, notwithstanding that the State Board of Control, in ruling on a claim of reimbursement, had adopted a different interpretation.

(10) Fires and Fire Districts § 2--Statutes and Ordinances--Hazardous Atmospheres Regulations--Standby Regulation--State-mandated Costs.

Increased local program levels, such as would be reimbursable by the state under [Rev. & Tax. Code, § 2207](#), subd. (c), were not mandated by the adoption of hazardous atmospheres firefighting regulations by the Division of Occupational Safety and Health. Although division inspectors previously gave firefighting agencies the impression that three-person teams equipped with respirators would be required, rather than the standard-practice two-person teams, the practice of continuing to use the two-person teams while adding a third to stand by was a choice made by local fire districts. The regulation did not

expressly require three-person teams, and no agency had been cited for failure to use them. Verbal exchanges between regulators and the agencies do not rise to the level of a legislative mandate or official policy.

COUNSEL

Ross & Scott, William D. Ross and Diana P. Scott for Real Party in Interest and Appellant.

Michael D. Mason and A. Margaret Cloudt for Plaintiff and Respondent.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Jeffrey J. Fuller and Faith J. Geoghegan, Deputy Attorneys General, for Defendant and Respondent.

PUGLIA, J.

In this appeal we consider whether a safety regulation promulgated by the Division of Occupational Safety and Health (Division) of the Department of Industrial Relations mandates increased costs to local *798 government such that they are reimbursable under the provisions of [Revenue and Taxation Code section 2201](#) et seq. [FN1] With respect to the period of time in issue, we conclude that the regulation does not create reimbursable state-mandated costs.

FN1 All references to sections or former sections of an unspecified code are to the Revenue and Taxation Code.

On October 8, 1980, Arcade Fire District (Arcade) filed a test claim with the State Board of Control (Board) asserting that title 8, section 5144, subdivision (g), of the California Administrative Code (hereafter referred to as Regulation) imposed additional manpower requirements upon it and other local fire protection districts beyond service levels required prior to January 1, 1973. [FN2] A local governmental agency (§ 2211), Arcade sought state reimbursement under former section 2231. (Repealed Stats. 1986, ch. 879, § 23; see now [Gov. Code, § 17561](#).) Arcade claimed it incurred additional manpower costs during fiscal years 1978-1979 and 1979-1980 as a result of Regulation 5144, subdivision (g), and that these costs were mandated

by the state within the meaning of [section 2207](#).

FN2 In 1985, administrative jurisdiction to hear and decide claims for reimbursement of state-mandated costs was transferred from the State Board of Control to the newly created Commission on State Mandates. ([Gov. Code, § 17500](#) et seq.)

[Section 2207](#) defines reimbursable "Costs mandated by the state." They include "any increased costs which a local agency is required to incur as a result of ... (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973." An "executive order" includes a regulation issued by a state agency such as the Division (§ 2209, subd. (c)). Specifically excluded from the definition of "[c]osts mandated by the State" are "[c]osts mandated by the federal government" as defined in section 2206 and former section 2253.2, subdivision (b)(3) (repealed Stats. 1986, ch. 879, § 41; see now [Gov. Code, § 17556](#), subd. (c)).

Regulation 5144, subdivision (g), was first adopted by the Division effective August 11, 1974. As amended effective October 14, 1978, the regulation provides: "In atmospheres immediately hazardous to life or health, at least two persons equipped with approved respiratory equipment shall be on the job. Communications shall be maintained between both or all individuals present. Standby persons, at least one of which shall be in a location which *799 will not be affected by any likely incidents, shall be present with suitable rescue equipment including self-contained breathing apparatus." [FN3]

FN3 The 1978 amendment deleted from the last sentence the concluding clause "in accordance with Section 5182, Confined Spaces," which had been included in the original version in 1974.

At the administrative hearing, Arcade established that it has always adhered to a practice, known as the "buddy system," whereby two firefighters enter a burning structure together. Arcade also presented evidence that the buddy system is considered essential to the safety of both firefighters and the

public and is practiced by firefighting agencies nationwide. Prior to the 1974 effective date of Regulation 5144, subdivision (g), Arcade was unaware of any standby requirement and used only two-person teams in its engine companies. After its effective date, Arcade interpreted the regulation to mandate a minimum firefighting team of at least three persons equipped with respiratory equipment, one of whom was required to stand by outside a burning structure while the other two operated together under the "buddy system." In support of this interpretation, Arcade presented evidence that Division inspectors had previously informed local fire protection districts that Regulation 5144, subdivision (g), requires a minimum of three fire fighters at the scene.

In opposition to Arcade's claim, the Division maintained that any costs incurred as a result of Regulation 5144, subdivision (g), were federally mandated because the state regulation merely implemented a federal regulation under the 1979 Federal Occupational Safety and Health Act. ([29 U.S.C. § 651](#) et seq.) Even if a state mandate were involved, the Division contended, Arcade's interpretation of the regulation was erroneous. In the Division's view, Regulation 5144, subdivision (g), requires only two persons to be on the job when atmospheres immediately hazardous to life or health are encountered- one person to stand by in a location unaffected by likely incidents and the other to encounter the dangerous atmosphere itself. While the Division would certainly encourage the use of three-person teams at the option of local fire districts, it takes the position that additional manpower is neither mandated by the express language of the regulation nor, as a matter of official policy, a firefighting standard which the Division seeks to enforce.

The Board found the regulation created a reimbursable state-mandated cost and approved Arcade's claim. The Board apparently concluded the regulation did not "explicitly require three-person companies" but considered its effect nonetheless "was to remove the previously existing option of public fire departments to deploy two-person companies," and that this requirement "exceeded federal and prior state safety regulations." *800

The Division sought mandamus to review the Board's ruling. (See former § 2253.5 repealed Stats. 1986, ch. 879, § 44; see now [Gov. Code, § 17559](#); [Code Civ. Proc., § 1094.5](#).) The superior court found the Board had abused discretion in allowing Arcade's claim and issued a peremptory writ of mandate

directing the Board to set aside its decision.

Arcade appeals from the order granting the Division mandamus relief. In challenging the court's conclusion that Regulation 5144, subdivision (g), did not create state-mandated costs, Arcade contends the court (1) applied the wrong standard of review, (2) improperly considered new evidence and legal issues which were not presented at the administrative hearing, and (3) erred in ruling that [section 2207](#), subdivision (f), did not apply.

I

Preliminarily, we set forth the applicable standard of review. In an administrative mandamus proceeding, we are bound by the Board's findings on all issues of fact within its jurisdiction which are supported by substantial evidence on the record. (See former § 2253.5; [Gov. Code, § 17559](#).) (1)The interpretation of an administrative regulation, however, like the interpretation of a statute, is a question of law ultimately to be resolved by the courts. ([Carmona v. Division of Industrial Safety](#) (1975) 13 Cal.3d 303, 310 [118 Cal.Rptr. 473, 530 P.2d 161]; [Skyline Homes, Inc. v. Occupational Safety & Health Appeals Bd.](#) (1981) 120 Cal.App.3d 663, 669 [174 Cal.Rptr. 665]; see also [People ex rel. Fund American Companies v. California Ins. Co.](#) (1974) 43 Cal.App.3d 423, 431 [117 Cal.Rptr. 623].)

Where the substantial evidence test applies, the superior court exercises an essentially appellate function in determining whether the administrative findings are supported by substantial evidence and the proceedings free from legal error; the scope of our appellate review is coextensive with that of the superior court. ([Bank of America v. State Water Resources Control Bd.](#) (1974) 42 Cal.App.3d 198, 207 [116 Cal.Rptr. 770]; [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182, 190 [203 Cal.Rptr. 258], disapproved on other grounds in [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 58, fn. 10 [233 Cal.Rptr. 38]; see also [Swaby v. Unemployment Ins. Appeals Bd.](#) (1978) 85 Cal.App.3d 264, 269 [149 Cal.Rptr. 336].) We therefore focus our review on the administrative proceedings, declining to consider specific claims of error committed by the superior court.

We shall also consider, as a preliminary matter, whether a federal mandate or an equally or more restrictive pre-1973 state regulation exists which would *801 bar Arcade's claim for reimbursement. (See § § 2206; 2207, subs. (c), (f); former §

2253.2, subd. (b)(3).) Although these legal theories may not have been thoroughly developed by the Division in the administrative proceedings, we are not foreclosed from addressing them on appeal. (See [City of Merced v. State of California \(1984\) 153 Cal.App.3d 777, 781 \[200 Cal.Rptr. 642\]](#); [Frink v. Prod \(1982\) 31 Cal.3d 166, 170-171 \[181 Cal.Rptr. 893, 643 P.2d 476\]](#).) Such consideration will not involve receipt of evidence not before the Board. The Board found Regulation 5144, subdivision (g), exceeded the requirements of both federal and pre-1973 state safety regulations. Our review necessarily requires that we take judicial notice of any statutes and published administrative regulations which impact upon the contentions of the parties. (See [Evid. Code, § 451](#), subds. (a), (b); [Gov. Code, § 11343.6](#); [44 U.S.C. § 1507](#).) In any event, Arcade is not prejudiced by our consideration of these issues on appeal because, as will appear, we reject the Division's arguments that a federal mandate or a pre-1973 state regulation bars Arcade's claim.

II

(2)The California Occupational Safety and Health Act (state OSHA; [Lab. Code, § 6300](#) et seq.), from which the Division derives its regulatory authority, was enacted in 1973 (Stats. 1973, ch. 993, § § 39-107) as a state plan under the Federal Occupational Safety and Health Act of 1970 (federal OSHA; see [29 U.S.C. § 667](#)). In 1974, an uncodified amendment to state OSHA was enacted which provided: "Notwithstanding [Section 2231 of the Revenue and Taxation Code](#) [providing for reimbursement to local governments for state- mandated costs], there shall be no reimbursement pursuant to this section ... because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 36, adding § 106 to ch. 993 of the Stats. of 1973.) [FN4] However, this legislative disclaimer of any reimbursable mandate with respect to state OSHA and regulations thereunder is not controlling here. Former section 2253, subdivisions (b) and (c) as amended (Stats. 1978, ch. 794, § 6; repealed Stats. 1986, ch. 879, § 40), permitted reimbursement claims for costs incurred after January 1, 1978, under an executive order or a bill chaptered after January 1, 1973, even though the bill or executive order contained a provision making inoperative former section 2231. Thus the legislative finding of federal mandate underlying *802 state OSHA (Stats. 1974, ch. 1284, § 36) has been superseded and does not in and of itself preclude a finding such as the Board made here that there is no

federal mandate preventing reimbursement of Arcade.

FN4 Chapter 993 of Statutes 1973 already had a section 106 as part of the original enactment. The original section 106 disclaimed any obligation to reimburse local costs incurred in complying with state OSHA "because the cost of implementing this act is minimal on a statewide basis in relation to the effect on local tax rates." (P. 1954.)

(3a)Having disposed of the express legislative declaration on the subject, we next consider whether state OSHA, under authority of which Regulation 5144, subdivision (g), was promulgated, in fact did no more than impose costs mandated by federal law.

As defined by section 2206, "[c]osts mandated by the federal government" include "any increased costs mandated ... upon a local agency ... after January 1, 1973, in order to comply with the requirements of federal statute or regulation." Although an executive order implementing a federal law may result in federally mandated costs in this general definitional sense, former section 2253.2, subdivision (b)(3), as amended in 1978 (see now [Gov. Code, § 17556](#), subd. (c)), provided that state reimbursement is available to a claimant if the executive order mandates costs which "exceed the mandate" of federal law or regulation. (Stats. 1978, ch. 794, § 10, eff. Sept. 18, 1978.) [FN5]

FN5 Effective January 1, 1981, section 2206 was amended to limit the definition of "costs mandated by the federal government" to increased costs mandated *specifically* by the federal government upon a local agency and to exclude from that definition those costs which result from programs or services "implemented at the option of the state, ..." (Stats. 1980, ch. 1256, § 3.) Correspondingly, subdivision (d) was added to [section 2207](#) to include within the definition of "costs mandated by the state" any increased costs a local agency is required to incur as a result of a post- 1973 executive order which implements or interprets a federal or state regulation and by such implementation or interpretation "increases program or service levels above

the levels required by such federal statute or regulation." (Stats. 1980, ch. 1256, § 4; see also [Gov. Code, § 17513](#), which excludes from "[c]osts mandated by the federal government" "programs or services which may be implemented at the option of the state,") While these amendments are supportive of the conclusion we reach, we assume for present purposes they have no retrospective operation with respect to costs incurred by Arcade during fiscal years 1978-1979 and 1979-1980.

We accept for purposes of discussion the Division's assertion that Regulation 5144, subdivision (g), simply mandates a safety standard patterned after and commensurate with a regulation promulgated under federal OSHA. Also governing the use of respirators, [29 Code of Federal Regulations, section 1910.134\(e\)\(3\) \(1986\)](#) reads in pertinent part: "... (i) In areas where the wearer, with failure of the respirator, could be overcome by a toxic or oxygen-deficient atmosphere, at least one additional man shall be present. Communications ... shall be maintained between both or all individuals present. Planning shall be such that one individual will be unaffected by any likely incident and have the proper rescue equipment to be able to assist the other(s) in case of emergency. [¶] (ii) When self-contained apparatus or hose *803 masks with blowers are used in atmospheres immediately dangerous to life or health, standby men must be present with suitable rescue equipment."

The federal regulation, unlike the state regulation in issue, has no applicability to local fire departments such as Arcade. By definition, regulated employers under federal OSHA do not include the political subdivisions of a state. ([29 U.S.C. § 652\(5\)](#); [29 C.F.R. § 1910.2\(c\)](#).) [FN6] On the other hand, the state OSHA broadly defines the "places of employment" over which the Division exercises safety jurisdiction to include public agency employers within the state. ([Lab. Code, § 6303](#), subd. (a); see also [United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd.](#) (1982) [32 Cal.3d 762, 767](#) [[187 Cal.Rptr. 387, 654 P.2d 157](#)].)

FN6 Indeed, to our knowledge the federal government did not assert safety jurisdiction over "private fire brigades until federal regulations on the subject were first published in September 1980. (See [29](#)

[C.F.R. § 1910.156\(a\)\(2\) and \(f\)\(1\)\(i\)](#); 45 Fed. Reg. 60706, amended May 1, 1981, [46 Fed. Reg. 24557](#).)

Where a state chooses to adopt its own occupational safety and health plan, the federal OSHA requires as a condition for approval of the plan that the state establish and maintain a comprehensive program which extends, to the extent permitted by state law, "to all employees of public agencies of the State and its political subdivisions." ([29 U.S.C. § 667\(c\)\(6\)](#); [29 C.F.R. § 1902.3\(j\)](#).) A state plan, if approved, must also provide for the development and enforcement of safety standards "at least as effective" as the standards promulgated under federal OSHA. ([29 U.S.C. § 667\(c\)\(2\)](#).) However, these conditions for approval do not render costs incurred by a local agency as a result of a state safety regulation federally mandated costs within the meaning of former section 2253.2, subdivision (b)(3). Clearly, the initial decision to establish locally a federally approved plan is an option which the state exercises freely. In no sense is the state *compelled* to enter a compact with the federal government to extend jurisdiction over occupational safety to local government employers in exchange for the removal of federal preemption. ([29 U.S.C. § 667\(b\)](#).) (Accord, [City of Sacramento v. State of California](#), *supra.*, [156 Cal.App.3d at pp. 194-199](#).)

(4) In [United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd.](#), *supra.*, [32 Cal.3d 762](#), the court expressed this principle as follows: " Under the [29 United States Code] [section 667](#) scheme, California is preempted from regulating matters covered by Fed/OSHA [Federal Occupational Safety and Health Administration] standards unless the state has adopted a federally approved plan. The section does not, however, confer federal power on a state-like California- that has adopted such a plan; it merely removes federal preemption so that the state may exercise its own sovereign powers *804 over occupational safety and health. (See, e.g., [American Federation of Labor, etc. v. Marshall](#) (D.C.Cir. 1978) [570 F.2d 1030, 1033](#); [Green Mt. Power v. Com'r of Labor and Industry](#) (1978) [136 Vt. 15](#) [[383 A.2d 1046, 1051](#)]. See also [29 U.S.C. § 651\(b\)\(11\)](#).) There is no indication in the language of the act that a state with an approved plan may not establish more stringent standards than those developed by Fed/OSHA (see [Skyline Homes, Inc. v. Occupational Safety & Health Appeals Bd.](#) (1981) [120 Cal.App.3d 663, 671](#) ...) or grant to its own occupational safety and health agency more extensive jurisdiction than

that enjoyed by Fed/OSHA." (*United Air Lines, Inc., supra*, 32 Cal.3d at pp. 772-773.) (3b) Thus since Division was not required to promulgate Regulation 5144, subdivision (g), to comply with federal law, the exemption for federally mandated costs does not apply.

III

(5) State regulations which do not *increase* program levels above the levels required prior to January 1, 1973, do not result in "costs mandated by the state" within the meaning of [section 2207](#), subdivision (c). The Division submits that former Regulation 5182, which existed prior to 1973, provided standby personnel requirements which were equal to, if not more stringent than, those set forth in Regulation 5144, subdivision (g). A comparison of the two regulations, however, convinces us that former Regulation 5182 was limited to employees working within tanks, vessels, and similar "confined spaces" and was never intended more broadly to encompass fire fighters working in burning structures.

Subdivision (c) of former Regulation 5182 expressly required at least two persons on the job in addition to the standby employee when conditions necessitated the wearing of respiratory equipment in a confined space. [FN7] It was not replaced until 1978, when new article 108 (Regulations 5156-5159, Cal. Admin. Code, tit. 8), entitled "Confined Spaces," was added. (Cal. Admin. Notice Register, tit. 8, Register 78, No. 37.) We do not agree with the Division that Regulation 5182 covered fire fighters (see *Carmona* *805 *Division of Industrial Safety, supra*, 13 Cal.3d at p. 310). Moreover, we note that the Division's reading of the regulation would undermine, if not invalidate, its alternative position that it has always required only a minimum two-person, firefighting team. Thus if Regulation 5144, subdivision (g), properly interpreted, requires a minimum of three persons as contended by Arcade, it does increase program levels above those required prior to January 1, 1973. Before we address that issue directly, we consider the rationale of the Board's decision.

FN7 As pertinent here, former Regulation 5182 provided: "... (b) An approved safety belt with a life line attached or other approved device shall be used by employees wearing respiratory equipment within tanks, vessels, or confined spaces ... At least one employee shall stand by on the outside while employees are inside, ready to give

assistance in case of emergency. If entry is through a top opening, at least one additional employee, who may have other duties, shall be within sight and call of the stand-by employee. [¶] (c) When conditions require the wearing of respiratory equipment in a confined space, at least two men equipped with approved respiratory equipment, exclusive of the employees that may be necessary to operate blowers and perform stand-by duties, shall be on the job. One or more of the employees so equipped may be within the confined space at the same time, provided, however, that this shall not apply to tanks of less than 12 feet in diameter, when entrance is through a side manhole." (Cal. Admin. Notice Register, tit. 8, Register 72, No. 6, dated Feb. 5, 1972.)

IV

The Board's approval of Arcade's claim was based on the conclusion that, although Regulation 5144, subdivision (g), did not expressly require three-person engine companies, its effect was to remove a previous option of local fire districts to use only two person companies. In so concluding, the Board apparently relied on the definition of "[c]osts mandated by the state" as expressed in subdivision (f) rather than subdivision (c) of [section 2207](#). Under subdivision (f), costs are mandated and reimbursable when they result from "Any ... executive order issued after January 1, 1973, which ... *removes an option previously available to local agencies* and thereby increases program or service levels" (Italics added.)

Because subdivision (f) did not become effective until January 1, 1981 (Stats. 1980, ch. 1256, § 4), the Division contends the Board could not retroactively apply the removal-of-an-option criterion to Arcade's October 1980 reimbursement claim for costs incurred during fiscal years 1978-1979 and 1979-1980. We agree.

(6) We observe first that the amendment which added subdivisions (d) through (h) to [section 2207](#) significantly expanded the situations in which a claimant could seek reimbursement for "[c]osts mandated by the state." (See *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, 572 [200 Cal.Rptr. 394].) Before 1981, the entire spectrum of state-mandated costs was confined to those defined in subdivisions (a) through (c) of

[section 2207](#). [FN8] As the 1980 amendment necessarily increased the state's liability for *806 locally incurred costs, it must be construed as substantive rather than procedural or remedial in nature. (See [Alta Loma School Dist. v. San Bernardino County Com. on School Dist. Reorganization](#) (1981) 124 Cal.App.3d 542, 553 [177 Cal.Rptr. 506].) A statute affecting substantive rights is presumed not to have retrospective application unless the courts can clearly discern from the express language of the statute or extrinsic interpretive aids that the Legislature intended otherwise. ([In re Marriage of Bouquet](#) (1976) 16 Cal.3d 583, 587 [128 Cal.Rptr. 427, 546 P.2d 1371]; [Thompson v. Modesto City High School Dist.](#) (1977) 19 Cal.3d 620, 625, fn. 3 [139 Cal.Rptr. 603, 566 P.2d 237]; [Alta Loma School Dist.](#), *supra.*, at p. 553.)

FN8 As amended, [section 2207](#) now reads in full: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following:
"(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program;
"(b) Any executive order issued after January 1, 1973, which mandates a new program;
"(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973.
"(d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels required by such federal statute or regulation.
"(e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure.
"(f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option

previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service.

"(g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of such program or service.

"(h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

Although all of the new subdivisions added by the 1980 amendment to [section 2207](#) expressly deal with executive orders issued after January 1, 1973, nothing has been brought to our attention which would indicate the Legislature intended retroactive operation of the expanded definition to resulting costs incurred before the 1981 effective date of the amendment. When [section 2207](#) was originally enacted in 1975, the Legislature provided that subdivisions (a) through (c) were "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6.) However, the 1980 amendment adding subdivisions (d) through (h) conspicuously omits any such statement or other indication of retrospective application. (7) Moreover, other related statutory provisions make it clear that the Legislature intended strictly to limit the time period within which a reimbursement claim may be brought for costs incurred during a prior fiscal year. (Former § 2218.5, see now [Gov. Code, § 17560](#); former § 2231, subd. (d)(2), see now [Gov. Code, § 17561](#), subd. *807 (d)(2); former § 2253; former § 2253.8, repealed Stats. 1986, ch. 879, § 45, see now [Gov. Code, § 17557](#).) Hence, we presume that subdivision (f) of [section 2207](#) applies prospectively only to costs incurred by local agencies after its effective date, January 1, 1981, and not before. (Accord, [City of Sacramento v. State of California](#), *supra.*, 156 Cal.App.3d at p. 194, disapproved on other grounds in [County of Los Angeles v. State of California](#), *supra.*, 43 Cal.3d at p. 58, fn. 10.) Subdivision (f) therefore is not available to support Arcade's claim.

V

The remaining issue is whether Arcade incurred state-mandated costs within the meaning of subdivision (c) of [section 2207](#). It will be recalled that under subdivision (c) of [section 2207](#), reimbursable costs mandated by the state include "any increased costs which a local agency is required to incur as a result of ... (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973."

As recognized by the Board, the problem resides in the ambiguity of Regulation 5144, subdivision (g). No one contests the regulation's applicability to the occupation of fire fighting. (8) (see fn. 9) But depending on the significance ascribed to certain of its language, e.g., "In atmospheres," "on the job," "Communications ... between both or all" (italics added) and "standby persons," the regulation is reasonably susceptible to alternative interpretations: (1) at least two persons must enter a dangerous atmosphere, (i.e., to be "on the job" one must be "in" the atmosphere) while a third remains outside, (2) at least two persons must stand by (i.e., "standby persons") while others(s) perform a job in a dangerous atmosphere, [FN9] or (3) a total of two persons-one active and one standing by-is all that is required when working in a dangerous atmosphere.

FN9 Notwithstanding the use of the plural ("standby persons"), a general rule of construction is that words used in the singular include the plural and vice versa. (See [Lab. Code, § 13](#); [Civ. Code, § 14](#).) Arcade does not contend the regulation requires more than one standby person.

(9)In view of these inherent ambiguities, the interpretation given the regulation by the Division as the administrative agency charged with its enforcement is entitled to great weight. ([People v. French](#) (1978) 77 Cal.App.3d 511, 521 [143 Cal.Rptr. 782]; see also [Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.](#) (1981) 29 Cal.3d 101 111 [172 Cal.Rptr.194, 624 P.2d 244]; [Carmona v. Division of Industrial Safety, supra.](#), 13 Cal.3d at p. 310.) We shall defer to the Division's interpretation that the *808 intended meaning of the regulation, when considered generally and in the abstract, is to

require the presence of only two persons using respiratory equipment in workplaces involving hazardous atmospheres. Such deference does not undercut the authority vested in the Board to determine the existence of state-mandated costs under [section 2201](#) et seq. In the exercise of that authority the Board also owes a duty of deference to the administrative agency's interpretation of its regulation. The Board is not licensed to impress its own interpretation upon an administrative regulation in derogation of the reasonable construction of the responsible agency.

(10)In this regard, Arcade contends that substantial evidence supports the conclusion that the practical consequence of Regulation 5144, subdivision (g), is to mandate an increase in firefighting manpower from two to three persons. Viewing as we must the evidence at the hearing in a light most favorable to Arcade, we accept as true the proposition that fire fighting agencies universally consider the two-person "buddy" system essential to the safety of the workers. We also accept as true that Division inspectors previously gave firefighting agencies the impression that three-person teams are a necessary safeguard.

It does not follow, however, that the regulation in question mandates an increase in "program levels above the levels required prior to January 1, 1973" as defined by [section 2207](#), subdivision (c). (Italics added.) Although founded on safety reasons, the continued practice of using two fire fighters to enter a burning structure while adding a third to meet the requirement of a standby was a choice which rested with the local fire districts. As the Board recognized, the regulation does not expressly require three-person teams nor has the Division issued a citation for failure to use the additional manpower. Verbal exchanges between Division personnel and the fire districts do not rise to the level of a legislative mandate or official policy. Failing proof that it is impossible to fight fires without the use of "buddies," Arcade cannot inject its own safety standards into a state regulation and say it is a "requirement" of the state.

We conclude that Regulation 5144, subdivision (g), did not mandate an increase in Arcade's fire protection costs for the 1978-1979 and 1979-1980 fiscal years. Accordingly, there was no error in the superior court's order directing the Board to vacate its decision allowing Arcade's claim.

The order granting the Division's petition for a writ of mandate is affirmed.

189 Cal.App.3d 794
234 Cal.Rptr. 661, 1986-1987 O.S.H.D. (CCH) P 27,921
(Cite as: 189 Cal.App.3d 794)

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Regan, J., and Sparks, J., concurred.

A petition for a rehearing was denied March 17,
1987. *809

Cal.App.3.Dist.,1987.

Division of Occupational Safety and Health v. State
Bd. of Control (Arcade Fire Dist.)

END OF DOCUMENT

C

CITY OF ANAHEIM, Plaintiff and Appellant,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents; BOARD OF
 ADMINISTRATION OF THE PUBLIC
 EMPLOYEES' RETIREMENT SYSTEM, Real Party
 in
 Interest and Respondent.

No. B017415.

Court of Appeal, Second District, Division 1,
 California.

Mar 5, 1987.

[Opinion certified for partial publication. [FN*]]

FN* Pursuant to California Rules of [Court rules 976\(b\)](#) and [976.1](#), this opinion is certified for publication with the exception of parts I, III, IV, and V of the Discussion section.

SUMMARY

The trial court denied a city's petition for writ of administrative mandamus and declaratory relief to direct the State Board of Control to honor its test claim for reimbursement, pursuant to [Cal. Const., art. XIII B, § 6](#) (subvention for state-mandated local expenses), for costs incurred as a result of reserve transfers in the Public Employees' Retirement System (PERS). The transfers reduced credits the city received for interest earned on deposits, resulting in a higher employer contribution rate. (Superior Court of Orange County, No. C 519823, Warren H. Deering, Judge.)

The Court of Appeal affirmed, holding that the change in PERS accounts did not impose a higher or new level of service on local government employers, that the city was not compelled to do anything by the changes, and that any increase in the employer contribution rate was incidental to the compliance of PERS, a state agency, with an act of the Legislature.

(Opinion by Devich, J., with Spencer, P. J., and Hanson, (Thaxton), J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Municipalities § 67--Public Employees' Retirement System.

Once contributed to the Public Employees' Retirement System (PERS), municipal employee pension funds constitute a trust fund held for the *1479 benefit of PERS members and beneficiaries, and a municipality thereafter has no right to directly control the manner in which these funds are spent, provided they are used for a purpose beneficial to PERS members.

(2) State of California § 11--Fiscal Matters--State Reimbursement of Local Governments for State-mandated Expenses--Public Employees' Retirement System-- Employer Contribution Rates--Incidental Increases.

In an administrative mandamus proceeding brought by a city to compel the State Board of Control to grant the city's claim to reimbursement for increased employer contribution rates to the Public Employees' Retirement System (PERS), attributable to transfers of reserve funds to a special temporary benefits fund pursuant to an act of the Legislature, the trial court properly denied the writ on the ground that such an increase was not reimbursable under [Cal. Const., art. XIII B, § 6](#), as a state-mandated local expense. Bearing the costs of employment is not a "service" that the city is required by state law to provide in its governmental function, and where such costs as pension contributions, workers' compensation insurance, and other expenses of public employment increase incidentally to legislatively imposed changes in the operation of a state agency like PERS, reimbursement of local government employers is not compelled by the legislative purposes of [§ 6](#) (control of excessive taxation and spending, prevention of shift of financial burdens of programs from state to local governments).

[See [Cal. Jur. 3d, State of California, § 78; Am. Jur. 2d, Municipal Corporations, § 579 et seq.](#)]

COUNSEL

Ross & Scott, William D. Ross and Diana P. Scott
for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, N. Eugene
Hill, Chief Assistant Attorney General, Henry G.
Ullerich and Martin H. Milas, Deputy Attorneys
General, for Defendants and Respondents.

No appearance for Real Party in Interest and
Respondent.

DEVICH, J.

The City of Anaheim (hereafter City) sought
reimbursement for costs it allegedly incurred as a
result of the enactment of Assembly Bill *1480 No.
2674 (Stats. 1980), chapter 1244, page 4220
(hereafter 1244/80). The State Board of Control
(hereafter Board) denied City's claim. City thereafter
filed a petition in the superior court seeking a writ of
mandate and declaratory relief. City now appeals
from the judgment denying its petition. We affirm.

Procedural History

On October 19, 1981, City filed a "test claim"
(former Rev. & Tax. Code, § 2218, subd. (a))
seeking reimbursement of the \$153,614.61 it alleged
it incurred during the 1981 fiscal year to comply with
1244/80. This test claim was amended on May 6,
1982. As amended, the test claim alleged the
following bases for reimbursement: (1) the transfer of
funds out of the Public Employees' Retirement
System's (hereafter PERS) reserve for deficiencies
account caused a reduction in the interest credited to
City's account thereby requiring a higher employer
contribution rate; (2) 1244/80 removed City's former
option of negotiating with its employees to increase
the cost of living allowance; and (3) 1244/80
increased the cost of an existing program or service.

On August 12, 1982, Board conducted a hearing
regarding City's test claim. On September 30, 1982,
Board adopted a written statement in support of its
decision to deny City's test claim.

On April 20, 1983, the superior court issued a writ of
mandate commanding Board to hold a further hearing
and issue a proper statement of findings.

Board conducted another hearing on February 16,

1984, but deadlocked two to two on whether to find a
state-mandated cost.

City resubmitted its test claim pursuant to former
Revenue and Taxation Code section 2252 on
February 21, 1984. After conducting a hearing, Board
denied City's test claim on March 28, 1984. Board
adopted a written statement in support of its decision
on May 31, 1984.

On October 24, 1984, City filed a petition in the
superior court seeking a writ of mandate and
declaratory relief. Judgment denying the requested
relief was filed on October 8, 1985.

1244/80

1244/80 added former section 21231 to the
Government Code. This section required the Board of
Administration of PERS to transfer all funds *1481
in the Public Employees' Retirement Fund's reserve
for deficiencies account that exceeded 2 percent of
the total assets in the retirement fund to a special
account to be used for a temporary increase in
benefits received by retired public employees.

Local Governments' Right to Reimbursement

Article XIII B, section 6, of the California
Constitution (hereafter section 6) provides:
"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 program or
increased level of service, except that the Legislature
may, but need not, provide such subvention of funds
for the following mandates: [¶] (a) Legislative
mandates requested by the local agency affected; [¶]
(b) Legislation defining a new crime or changing an
existing definition of a crime; or [¶] (c) Legislative
mandates enacted prior to January 1, 1975, or
executive orders or regulations initially implementing
legislation enacted prior to January 1, 1975."

At the time the test claim in the case at bench was
filed, former Revenue and Taxation Code section
2231, subdivision (a), required the state to reimburse
local agencies for all "costs mandated by the state."
Among the definitions of this term contained in
Revenue and Taxation Code section 2207 are the
following: "[A]ny increased costs which a local
agency is required to incur as a result of the
following: [¶] (a) Any law enacted after January 1,
1973, which mandates a new program or an increased

level of service of an existing program: [] [¶] (f) Any statute enacted after January 1, 1973, ... which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service. [] [¶] (h) Any statute enacted after January 1, 1973, ... which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

Statutes 1986, chapter 879, sections 6 and 23 repealed [Revenue and Taxation Code section 2231](#), subdivision (a), and added the similar provision of [Government Code section 17561](#), subdivision (a). "Costs mandated by the state" is now defined as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, ... which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." ([Gov. Code, § 17514](#).) *1482

City's Contentions

On appeal, City contends: (1) that the trial court neglected to apply [Government Code section 17500](#) et seq. to the case at bench; (2) that the trial court erroneously analyzed [section 6](#); (3) that Board abused its discretion in that its findings are not supported by substantial evidence and that it did not proceed in the manner prescribed by law; (4) that Board's decision was not supported by adequate findings; and (5) that it is entitled to attorneys' fees.

Discussion

I.

..... [FN*]

FN* See footnote, [ante, page 1478](#).

II. Does [section 6](#) require reimbursement to City?
No.

City contends that since 1244/80 does not fall within any of the exceptions to reimbursement listed in [section 6](#), the trial court abused its discretion in failing to order reimbursement. While focusing on the exceptions to reimbursement, City conveniently

presumes that 1244/80 mandated a higher level of service on local government, a prerequisite to reimbursement when an existing program is modified.

City's claim for reimbursement must fail for the following reasons: (1) 1244/80 did not compel City to do anything, (2) any increase in cost to City was only incidental to PERS' compliance with 1244/80, and (3) pension payments to retired employees do not constitute a "program" or "service" as that term is used in [section 6](#).

1244/80 required PERS, a state agency, to increase pension payments to retired public employees. Local governments were not responsible for making these payments since the money came out of an existing reserve fund already under PERS' control. (1) Once contributed, PERS funds constitute a trust fund held for the benefit of PERS members and beneficiaries. ([Valdes v. Cory \(1983\) 139 Cal.App.3d 773, 788 \[189 Cal.Rptr. 212\]](#).) Therefore, City had no right to directly control the manner in which these funds were spent provided the funds were used for a purpose beneficial to PERS members. (*Ibid.*)

City maintains that PERS' compliance with 1244/80 caused a reduction in the interest credited to its account by PERS which resulted in a higher contribution rate to the fund. While it may be true that the removal of money from the reserve for deficiencies account caused City to incur a higher contribution *1483 rate as an employer, PERS was under no legal obligation to credit City's account with excess interest earned on PERS funds. Therefore, any increase in City's contribution rates due to the absence of excess interest credit enjoyed in previous years would have been merely incidental to PERS' compliance with 1244/80.

(2) Finally, we conclude that 1244/80's temporary increase in pension benefits to retired public employees does not constitute a "program" or "service" as these terms are used in [section 6](#).

In [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46 \[233 Cal.Rptr. 38\]](#), our Supreme Court addressed the issue of whether [section 6](#) required reimbursement to local governments for state statutes that increased certain workers' compensation benefit payments. The court concluded that "when the voters adopted [article XIII B, section 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather,

the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word 'programs' they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public." (*Id.*, at pp. 49-50.)

The court further stated that "section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers [.] In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6." (*Id.*, at pp. 57-58, fn. omitted.)

City argues that since 1244/80 specifically dealt with pensions for *public* employees, it imposed unique requirements on local governments that did *1484 not apply to all state residents or entities. [FN1] Such an argument, while appealing on the surface, must fail. As noted above, 1244/80 mandated increased costs to a state agency, not a local government. Also, PERS is not a program administered by local agencies.

FN1 City's argument was formerly supported by *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] wherein the court concluded that costs incurred by local governments in complying with a statute that required public employees to be covered by the state unemployment insurance law amounted to

"costs mandated by the state" and therefore reimbursable under section 6. However, we note that the Supreme Court, in *County of Los Angeles v. State of California, supra.*, 43 Cal.3d at page 58, footnote 10, disapproved of the *City of Sacramento* holding to the extent that it conflicted with that court's holding.

Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending... [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies.... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra.*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public. [FN2]

FN2 In interpreting a reimbursement provision similar to section 6, the Washington Attorney General opined that increased contributions by a local taxing district to the public employee retirement system would not be reimbursable since "the increased costs represented only increased remuneration of existing employees and not any new or increased service to the general public." (*City of Seattle v. State* (1983) 100 Wn.2d 16 [666 P.2d 359, 363], citing Ops.Wash.Atty.Gen. 24 (1980).)

We therefor conclude that 1244/80 does not fall within the scope of section 6.

III.-V.

..... [FN*] .

FN* See footnote, *ante*, page 1478.

Disposition

The judgment is affirmed.

189 Cal.App.3d 1478
235 Cal.Rptr. 101
(Cite as: 189 Cal.App.3d 1478)

Page 5

Spencer, P. J., and Hanson (Thaxton), J., concurred.
***1485**

Cal.App.2.Dist.,1987.

City of Anaheim v. State (Board of Admin. of Public
Employees' Retirement System)

END OF DOCUMENT



LUCIA MAR UNIFIED SCHOOL DISTRICT et al.,
 Plaintiffs and Appellants,

v.

BILL HONIG, as Superintendent, etc., et al.,
 Defendants and Respondents

No. S000064.

Supreme Court of California

Mar 14, 1988.

SUMMARY

School districts filed a test claim with the Commission on State Mandates to determine whether [Ed. Code, § 59300](#) (requiring school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped), imposed on them a state-mandated "new program or higher level of service" for which the state must provide reimbursement under [Cal. Const., art. XIII B, § 6](#). The commission found that [§ 59300](#) did not impose a new program or higher level of service. The districts filed a petition for writ of mandate, declaratory relief, and restitution against the commission, the State Superintendent of Public Instruction, and the Department of Education. The trial court affirmed the commission's decision. (Superior Court of San Luis Obispo County, No. 60152, Walter W. Charamza, Judge. [FN*]) The Court of Appeal, Sixth Dist., No. B019083, affirmed the trial court's judgment.

The Supreme Court reversed the judgment of the Court of Appeal. It held that [§ 59300](#) does impose a new program or higher level of service but that remand to the commission was necessary to determine whether the provision was state-mandated. However, the court held, the superintendent and the department did not act in excess of their authority in deducting the amounts owed by the districts from funds appropriated by the state for their support after the districts refused to pay invoices submitted to them pursuant to [§ 59300](#).

FN* Retired judge of the superior court

sitting under assignment by the Chairperson of the Judicial Council. (Opinion by Mosk, J., with Lucas, C. J., Broussard, Panelli, Arguelles, Eagleson and Kaufman, JJ., concurring.) *831

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Schools § 4--School Districts; Financing; Funds--State Reimbursement for New Programs and Higher Levels of Service--Cost of Educating Severely Handicapped at State Schools.

[Ed. Code, § 59300](#) (requiring school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped), imposes on school districts a "new program" within the meaning of [Cal. Const., art. XIII B, § 6](#) (providing reimbursement to local agencies for state-mandated new programs or higher levels of service). Thus, in a test claim filed by school districts, the Commission on State Mandates erred in finding to the contrary; however, remand to the commission was necessary to determine whether [§ 59300](#) was a state mandate.

(2) State of California § 11--Fiscal Matters--Reimbursement of Local Agencies for State-mandated New Programs or Higher Levels of Service.

The intent of [Cal. Const., art. XIII B, § 6](#), was to preclude the state from shifting to local agencies the financial responsibility for providing public services, in view of restrictions imposed on the taxing and spending power of local entities by Cal. Const., art. XIII A.

[See [Cal. Jur. 3d](#), Municipalities, § 361; [Am. Jur. 2d](#), [Municipal Corporations, Counties, and Other Political Subdivisions, § 582](#).]

(3) State of California § 11--Fiscal Matters--Deduction From School Appropriations of Amounts Owed State.

Where, following enactment of [Ed. Code, § 59300](#) (requiring school districts to contribute part of cost of educating pupils from district at state schools for severely handicapped), school district refuse to pay

invoices sent them by the state pursuant to [§ 59300](#), the State Superintendent of Public Instruction and the Department of Education did not act in excess of their authority in deducting the amounts owed by the districts from funds appropriated by the state for their support. Under the circumstances the method of collection was left to the reasonable discretion of the department, and, in view of the fact that no test claim had been filed when the school districts failed to pay the invoices, the method of collection the department chose was not unreasonable. *832

COUNSEL

Frank J. Fekete, Peter C. Carton, Joanne A. Velman, Stephen L. Hartsell, Dwaine L. Chambers and Roger R. Grass for Plaintiffs and Appellants.

Joseph R. Symkowick, Roger D. Wolfertz, Joanne Lowe, John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, and Henry G. Ullerich, Deputy Attorney General, for Defendants and Respondents.

MOSK, J.

[Section 59300 of the Education Code](#) requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped. We must determine if that section imposes on a district a state-mandated "new program or higher level of service" for which the state must provide reimbursement under [section 6 of article XIII B of the California Constitution](#). [FN1] The constitutional provision, adopted by initiative in 1979, declares, with exceptions not relevant here, that "[w]henever the Legislature ... 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 program or increased level of service. ..."

FN1 Hereafter all statutory references are to the Education Code unless otherwise noted, and all references to articles are to the California Constitution.

The resolution of the question before us turns on whether the contributions made by a district pursuant to [section 59300](#) are used to fund "a new program or

higher level of service" and, if so, whether the statute "mandates" that a district make the contribution set forth therein. We conclude that the contribution required by [section 59300](#) is utilized to fund a "new program" as defined in the constitutional provision, but that it is not clear from the record whether districts are "mandated" to pay these costs. The matter will therefore be remanded to the Commission on State Mandates to make that determination.

The State Department of Education (department) operates schools for severely handicapped students, including schools for the deaf (§ 59000 et seq.), the blind (§ 59100 et seq.), and the neurologically handicapped (§ 59200 et seq.). Although prior to 1979, school districts were required by statute to contribute to the education of pupils from the districts at the state *833 schools (former § 59021, 59121, 59221), these provisions were repealed in that year and on July 12, 1979, the state assumed the responsibility for full funding. (Stats. 1979, ch. 237, § 3, p. 493.) This responsibility existed when [article XIII B](#) became effective on July 1, 1980 ([art. XIII B, § 10](#)), and continued until [section 59300](#) became effective on June 28, 1981. (Stats. 1981, ch. 102, § 17, p. 703.)

[Section 59300](#) represents an attempt by the state to compel school districts to share in these costs. The section provides, "Notwithstanding any provision of this part to the contrary, the district of residence of the parent or guardian of any pupil attending a state-operated school pursuant to this part, excluding day pupils, shall pay the school of attendance for each pupil an amount equal to 10 percent of the excess annual cost of education of pupils attending a state-operated school pursuant to this part." [FN2]

FN2 "Excess annual cost" means the total cost of educating a pupil in a state-operated school less a school district's annual base revenue limit, multiplied by the estimated average daily attendance of the state-operated school.

Starting in 1981, the department attempted to collect the contributions called for in the section by sending invoices to the school district superintendents. When the invoices were not paid, their amount was deducted from the appropriations made by the state to the districts for the support of the schools.

The Government Code sets forth a procedure to

determine whether a statute imposes state-mandated costs on a school district or other local agency under [article XIII B](#). ([Gov. Code, § 17500](#) et seq.). The district must file a test claim with the Commission on State Mandates (commission) which, after a hearing, decides whether the statute mandates a "new program or increased level of service." (*Id.*, § § 17521, 17551, 17556.) If a claim is found to be reimbursable, the commission must determine the amount to be reimbursed. (*Id.*, § 17557.) The code specifies the procedure to be followed by a local agency to obtain reimbursement if the commission has determined that reimbursement is due. (*Id.*, § 17558 et seq.) If the Legislature refuses to appropriate money to satisfy a mandate found to be reimbursable by the commission, a claimant may bring an action for declaratory relief to enjoin enforcement of the mandate. (*Id.*, § 17612, subd.(b).) [FN3] In the event the commission finds against the local agency, it may bring a proceeding in administrative mandate under [section 1094.5 of the Code of Civil Procedure](#) to challenge the commission's determination. (*[834 Gov. Code, § 17559.](#)) The procedure provided in the code is the exclusive means by which a local agency may claim reimbursement for mandated costs. (*Id.*, § 17552.)

FN3 In [Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521, 549 [234 Cal.Rptr. 795], the court observed that this remedy would afford relief only prospectively, and not as to funds previously paid out by a local agency to satisfy a state mandate.

In 1984 plaintiff Lucia Mar Unified School District and other school districts (plaintiffs) filed a test claim before the commission, [FN4] asserting that [section 59300](#) requires them to make payments for a "new program or increased level of service," and that they are entitled to reimbursement pursuant to [section 6 of article XIII B](#). The commission denied the claim, finding no reimbursable mandate because, although [section 59300](#) increased plaintiffs' costs for educating students at state-operated schools, it did not impose on the districts a new program or higher level of service.

FN4 The claim was originally filed with the State Board of Control, which preceded the commission; when the commission was created in 1984, the claim was transferred to

it for determination.

Plaintiffs then filed a petition for writ of mandate, declaratory relief, and restitution against the commission, the State Superintendent of Public Instruction (superintendent), and the department. They sought a declaration that [section 59300](#) violates [section 6 of article XIII B](#), and prayed for orders to compel the commission to reverse its determination, and the superintendent and the department to reimburse them for the amounts withheld under the authority of [section 59300](#). The trial court affirmed the commission's decision. It, too, held that [section 59300](#) does not mandate a new program or higher level of service, finding that the section only calls for an "adjustment of costs." [FN5]

FN5 The court found that this "adjustment" was "precipitated" by the Special Education Program, enacted in 1980 (Stats. 1980, ch. 797, § 9, p. 2411 et seq.), discussed in a later part of this opinion, which afforded local governments certain options to educate the handicapped.

The court held, further, that it had no jurisdiction to issue orders to the superintendent to refund the sums withheld from plaintiffs because the commission's decisions may only be challenged by a proceeding in administrative mandate under [section 1094.5 of the Code of Civil Procedure](#). ([Gov. Code, § 17552, 17559.](#)) Plaintiffs appealed. The Court of Appeal affirmed the judgment, reasoning that a shift in the funding of an existing program is not a new program or a higher level of service. It declined to rule whether restitution from the superintendent was an appropriate remedy.

(1a) The commission argues before this court, as it did below, that [section 59300](#) does not mandate a new program or a higher level of service. The superintendent and the department express no opinion as to the merits of plaintiffs' assertions, but argue that if we should find a reimbursable mandate, plaintiffs' remedy is to seek an appropriation from the Legislature rather than reimbursement from the department. *[835](#)

We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those

costs resulting from a new program or an increased level of service imposed upon them by the state. In keeping with this principle, we recently held in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] that legislation requiring local governments and other employers to increase certain workers' compensation benefits did not invoke the subvention requirement because the state mandate did not provide for a "program." We reasoned that the additional expense to the local agency mandated by the legislation arose as an incidental impact of a law which applied generally to all state residents and entities, and this type of expense was not what the voters had in mind when they adopted [section 6 of article XIII B](#). (See also *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484 [235 Cal.Rptr. 101].)

We defined a "program" as used in [article XIII B](#) as one that carries out the "governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*County of Los Angeles, supra*, 43 Cal.3d at p. 56.) Unquestionably the contributions called for in [section 59300](#) are used to fund a "program" within this definition, for the education of handicapped children is clearly a governmental function providing a service to the public, and the section imposes requirements on school districts not imposed on all the state's residents. Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since at the time [section 59300](#) became effective they were not required to contribute to the education of students from their districts at such schools.

The fact that the impact of the section is to require plaintiffs to contribute funds to operate the state schools for the handicapped rather than to themselves administer the program does not detract from our conclusion that it calls for the establishment of a new program within the meaning of the constitutional provision. To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying [section 6 of article XIII B](#). That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing power of local governments. (2) [Section 6](#) was intended to preclude

the state from shifting to local agencies the financial responsibility for providing public services *836 in view of these restrictions on the taxing and spending power of the local entities. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) [FN6]

FN6 The Revenue and Taxation Code also contains provisions requiring reimbursement of local agencies for state-mandated costs. ([Rev. & Tax Code, § 2201](#) et seq.) These provisions were enacted before the adoption of [article XIII B](#) (Stats. 1973, ch. 358, § 3, p. 780), but the principle of reimbursement was enshrined in the Constitution in 1979 with the adoption of [section 6 of article XIII B](#) to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.

(1b) The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate [section 6 of article XIII B](#) because the programs are not "new." Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of [article XIII B](#), the result seems equally violative of the fundamental purpose underlying [section 6](#) of that article. [FN7] We conclude, therefore, that because [section 59300](#) shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts - an obligation the school districts did not have at the time [article XIII B](#) was adopted - it calls for plaintiffs to support a "new program" within the meaning of [section 6](#). [FN8]

FN7 There is a statement in *County of Los Angeles, supra*, that a concern prompting the adoption of [section 6](#) in [article XIII B](#) "was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed

should be extended to the public." ([43 Cal.3d at p. 56.](#)) We do not read the phrase "administered by local agencies" to mean that the electorate intended that only locally administered programs require state reimbursement. The underlying premise of the sentence is that reimbursement is required if the state transfers fiscal responsibility to a local agency for a program the state deems desirable.

FN8 An opinion of the Attorney General, relied on by the commission, is inapposite. It suggests that a law increasing the number of judges in a municipal court district does not constitute a higher level of service under [section 6 of article XIII B](#) because the district has a constitutional obligation to provide for an adequate number of judges. (63 Ops.Cal.Atty.Gen. 700, 702. (1980)) In the present case, the issue is whether [section 59300](#) involves a new program rather than a higher level of service, and it is clear that at the time the section was enacted, plaintiffs did not have an obligation to contribute to the support of the students from their districts at the state schools for the severely handicapped.

The question remains whether school districts are "mandated" by [section 59300](#) to make the contributions called for therein. The commission claims that plaintiffs are not compelled to contribute to the education of handicapped children at the state schools because they possess other options to educate such students. In 1980, the Legislature passed a law codified in the Education Code, which requires local education agencies to assess the needs *837 of handicapped pupils residing in their districts, and to formulate an appropriate plan to educate them. (§ 56000 et seq.)

The commission asserts that a local agency has the option under section 56361 to provide a local program for handicapped children, to send them to private schools, or to refer them to the state-operated schools. At the hearing before the commission, the Department of Finance recommended that the commission find that [section 59300](#) does not impose a state mandate because plaintiffs were not required to send students from their districts to the state schools but had the additional options described in section 56361. The commission staff recommended

against adoption of this position on the ground that the plaintiffs "had no other reasonable alternative than to utilize the services of the state-operated schools, as they are the least expensive alternative in educating handicapped children." [FN9]

FN9 According to the Department of Finance, in 1979-1980, the average cost to educate a student in a local program was \$5,527, for private school the cost was \$9,527, and for the least expensive state school \$15,556. The local agency is required to pay 30 percent of the cost for students placed in private schools.

The commission did not and was not required to decide whether [section 59300](#) constitutes a state mandate since it concluded that plaintiffs were not entitled to reimbursement in any event because the section does not provide for a new program or increased level of service. The issue is for the commission to determine, as it is charged by [section 17551 of the Government Code](#) with the duty to decide in the first instance whether a local agency is entitled to reimbursement under [section 6 of article XIII B](#).

In view of our conclusion that the question whether [section 59300](#) amounts to a state mandate must be remanded to the commission, we do not decide whether, as the superintendent and the department argue, plaintiffs' sole remedy, in the event a reimbursable mandate is ultimately found, is to seek relief under the procedure set forth in [section 17500 et seq. of the Government Code](#).

(3) The final question is whether the superintendent and the department acted in excess of their authority in deducting the amount of the contributions required of plaintiffs by [section 59300](#) from the funds appropriated by the state to them for the support of the districts' schools. Plaintiffs cite no authority for the proposition that such conduct was improper. [Section 59300](#) does not specify the method by which the contributions of the school districts to the state schools shall be paid. We agree with the Court of Appeal that in these circumstances the method of collection is left to the reasonable discretion of the department, and in view of the fact no test claim had been filed when the school districts failed to pay the invoices, the *838 method of collection the Department chose was not unreasonable. (See, e.g., [Carmel Valley Fire Protection Dist. v. State of](#)

[California, supra, 190 Cal.App.3d 521, 550.](#))

The judgment of the Court of Appeal is reversed, and the court is directed to remand the matter to the commission for further proceedings consistent with this opinion.

Lucas, C. J., Broussard, J., Panelli, J., Arguelles, J., Eagleson, J., and Kaufman, J., concurred.

The petition of respondent Commission on State Mandates for a rehearing was denied April 27, 1988.
***839**

Cal., 1988.

Lucia Mar Unified School Dist. v. Honig

END OF DOCUMENT

H

LOS ANGELES UNIFIED SCHOOL DISTRICT,
 Plaintiff and Appellant,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents

No. B009241.

Court of Appeal, Second District, Division 5,
 California.

Mar 15, 1988.

SUMMARY

A school district petitioned the superior court for a writ of mandamus, seeking judicial review of an interpretation of law by the State Board of Control to the effect that the district was not entitled to reimbursement for compliance costs allegedly mandated by the California Occupational Safety and Health Administration (Cal OSHA) law. The superior court denied the writ on the ground that the district had no right to judicial review of the board's denial of its claim. The board had based its decision on its having previously denied a similar claim by another school district, which had not sought review. (Superior Court of Los Angeles County, No. C332013, Vernon G. Foster, Judge.)

The Court of Appeal reversed and remanded, holding that whether the Cal OSHA law mandates reimbursable compliance costs for school districts is a question of law for the courts to decide, and that the superior court erred in denying the writ, since former Rev. & Tax. Code, § 2253.5, gave the district standing to seek judicial review of the board's decision. The court also held that the hearings and records in the prior decision could properly be made part of the relevant administrative record in the instant proceeding, but further held that the district was not collaterally estopped to challenge the board's earlier interpretation of law. (Opinion by Ashby, Acting P. J., with Feinerman, J., [FN*] and Hastings, J., [FN†] concurring.) *687

FN* Retired Presiding Justice of the Court

of Appeal sitting under assignment by the Chairperson of the Judicial Council.

FN† Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#), [1c](#), [1d](#)) Administrative Law § 100--Administrative Mandamus--Availability of Remedy--Standing.

In an administrative mandamus proceeding, a school district had standing, under former Rev. & Tax. Code, § 2253.5, and [Code Civ. Proc. § 1094.5](#), to seek judicial review of the State Board of Control's denial of the district's claim for reimbursement of compliance costs allegedly mandated by the California Occupational Safety and Health Administration. This was so even though the board had previously determined, on a similar claim by another school district, that no such mandate existed, and no review had been sought. Nothing in former Rev. & Tax. Code, § 2253.2, subd. (a) (public hearing on the first such claim based on each chaptered bill to determine whether it mandates a cost), indicated legislative intent to foreclose claimants from access to the judiciary to review a question of law and statutory interpretation. Therefore, the superior court erred in finding the district could not seek judicial review of the board's denial of its claim on the basis of the board's former decision.

[See [Cal.Jur.3d, Administrative Law, § 317](#) et seq.; [Am.Jur.2d, Administrative Law, § 556](#) et seq.]

(2) State of California § 7--Actions--Board of Control--Reimbursable Costs.

Whether the California Occupational Safety and Health Administration law mandates reimbursable compliance costs is a question of law for the courts to decide.

(3) Administrative Law § 103--Administrative Mandamus--Administrative Record--Incorporation of

Prior Decisional Record.

In a school district's administrative mandamus proceeding against the State Board of Control under former Rev. & Tax. Code, § 2253.5, the hearings and records in a prior, similar proceeding involving another school district could properly be made part of the relevant administrative record under [Code Civ. Proc., § 1094.5](#), and the board was not required to hold another public hearing.

(4) Administrative Law § 79--Judicial Review and Relief--Limitations on Availability of Review or Relief--Collateral Estoppel.

A school district was not collaterally estopped to challenge an interpretation of law by the State Board of Control, where the district did not acquiesce in the board's findings but promptly sought judicial review, and where the district could not reasonably be considered in privity with another *688 school district that had not sought judicial review of a prior, similar interpretation of the same law.

COUNSEL

De Witt Clinton, County Counsel, Richard K. Mason, Deputy County Counsel, Ron Apperson and Ada R. Treiger for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, and Henry G. Ullerich, Deputy Attorney General, for Defendants and Respondents.

ASHBY, Acting P. J.

The Los Angeles Unified School District (District) filed a claim with the Board of Control of the State of California (Board) seeking to be reimbursed for financial costs of complying with Statutes 1973, chapter 993, which created the California Occupational Safety and Health Administration (Cal OSHA). District claimed that its costs of complying with the Cal OSHA law were costs mandated by the state for which District was entitled to reimbursement pursuant to [Revenue and Taxation Code section 2207.5](#) [FN1] and former section 2231. Board denied the claim on the ground that Board had previously determined, upon a similar claim by the San Jose School District, that "no mandate exists in Chapter 993, Statutes of 1973," because this chapter did not involve a new program or increased level of service beyond preexisting law applicable to school districts.

FN1 All statutory references are to the Revenue and Taxation Code unless otherwise specified.

Pursuant to former section 2253.5 and [Code of Civil Procedure sections 1094.5](#) and [1085](#), District petitioned for a writ of mandamus from the superior court, seeking judicial review of Board's determination that no mandate exists under this statute. The superior court denied the writ, not on its merits, but on the ground that District had no right to judicial review of Board's decision denying its claim. (1a) According to Board's and the superior court's interpretation of the pertinent claims procedures (former § 2250 et seq.), District, as well as any other local agency or school district, is bound by Board's prior determination on the San Jose claim, and cannot seek judicial review of Board's interpretation of the Cal OSHA law; according to this theory, only the San Jose School District could have sought such *689 judicial review, and since it did not, the question is foreclosed from judicial inquiry.

We hold this interpretation is erroneous. Board's opposition to judicial review in this case is based on an erroneous premise that multiple public hearings pursuant to former section 2253.2, subdivision (a), would be required. Although it was proper for Board to rely on its prior San Jose decision and to refuse to hold a new public hearing pursuant to former section 2253.2, District has the right to seek judicial review of Board's denial of *District's* claim. Board has incorporated its decision and proceedings in the San Jose case as its reason for denying District's claim in this case. (2) Whether the Cal OSHA law mandates reimbursable costs is a question of law for the court to decide. (See [Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521, 533, 536 [234 Cal.Rptr. 795].) To the extent Board's decision on the question of law involved is based on the evidence produced in the San Jose proceedings, those proceedings could be incorporated by reference as the appropriate administrative record in this case. We shall reverse so that the parties may present the superior court with an appropriate record for the court to determine whether the Cal OSHA law mandates reimbursable costs.

Discussion

(1b) District has the right to judicial review of Board's denial of District's claim, which was based on Board's interpretation of the Cal OSHA statute.

[FN2]

FN2 District's claim was denied on January 29, 1980. Accordingly, in footnotes 3 to 7, *post*, we quote pertinent former provisions of the Revenue and Taxation Code then applicable, as enacted by Statutes 1978, chapter 794. These provisions have since been repealed and the subject matter is now treated by [Government Code section 17500](#) et seq. (See Stats. 1986, ch. 879, § § 23, 37, 40, 41, 44, pp. 3045 & 3047.)

Under former section 2231, the state "shall" reimburse each school district for costs mandated by the state as defined in [section 2207.5](#). [FN3] Under former section 2250 the State Board of Control "shall hear and decide upon a claim" by a school district that the district has not been reimbursed for all costs mandated by the state as required by section 2231. [FN4] In this case Board *690 has heard and decided District's claim, denying the claim on the ground that no reimbursable costs have been mandated. Under former section 2253.5 "a claimant or the state may commence a proceeding in accordance with the provisions of [Section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the Board of Control on the grounds that the board's decision is not supported by substantial evidence." [FN5] In this case, District is "a claimant" and it seeks pursuant to [Code of Civil Procedure section 1094.5](#) to set aside "a decision of the Board of Control" on District's claim. [FN6] District's right to judicial review of the decision denying its claim is apparent from former section 2253.5. Board denied this claim on the basis of its hearing and decision on the San Jose claim. (3) The hearings and records in the San Jose case could properly be made part of the relevant administrative record in District's proceeding under [Code of Civil Procedure section 1094.5](#).

FN3 "2231. (a) The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207. The state shall reimburse each school district only for those 'costs mandated by the state' as defined in [Section 2207.5](#)." (Stats. 1978, ch. 794, § 1.1, p. 2546.)

FN4 "2250. The State Board of Control, pursuant to the provisions of this article,

shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for all costs mandated by the state as required by Section 2231 or 2234. [¶] Notwithstanding any other provision of law, this article shall provide the sole and exclusive procedure by which the Board of Control shall hear and decide upon a claim that a local agency or school district has not been reimbursed for all costs mandated by the state as required by Section 2231 or 2234." (Stats. 1978, ch. 794, § 5, p. 2549.)

FN5 "2253.5. A claimant or the state may commence a proceeding in accordance with the provisions of [Section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the Board of Control on the grounds that the board's decision is not supported by substantial evidence. The court may order the board to hold another hearing regarding such claim and may direct the board on what basis the claim is to receive a hearing." (Stats. 1978, ch. 794, § 8, p. 2551.)

FN6 The parties discuss the provisions of former section 2218, which defined different types of "claims." However, former section 2218 was not enacted until Statutes 1980, chapter 1256, section 7, page 4249. In this case, District's claim was denied on January 29, 1980, and in our opinion District was clearly a claimant within the meaning of former section 2253.5 then applicable.

At the time of District's claim in this case (see fn. 2, *ante*), a claim was defined by section 2253 as follows: "2253. Claims submitted pursuant to this article for reimbursement, as required by Section 2231, of a cost mandated by the state shall be limited to the following: [¶] (a) A claim alleging that the Controller has incorrectly reduced payments to a local agency pursuant to the provisions of paragraph (2) of subdivision (d) of Section 2231; [¶] (b) A claim alleging that a chaptered bill or an executive order has resulted in costs mandated by the state and that such bill or executive order contains a provision making inoperative Section 2231 or 2234 or [¶] (c) A claim alleging that a chaptered bill has resulted in costs mandated by the state and

that such bill contains neither a provision making inoperative Section 2231 or 2234 nor an appropriation to reimburse the claimant for such costs; or [¶] (d) A claim alleging that an executive order has resulted in costs mandated by the state, that no funds have been appropriated pursuant to Section 2231 to reimburse the claimant for such costs, and that such executive order does not contain a provision making inoperative Section 2231 or 2234. [¶] Subdivisions (b) and (c) of this section shall apply only to claims submitted under a bill chaptered after January 1, 1973, for all costs incurred after January 1, 1978." (Stats. 1978, ch. 794, § 6, p. 2549.)

(1c) Board relies upon the provisions in former section 2253.2, subdivision (a), for a public hearing on "the first claim" based upon each chaptered bill. [FN7] Board asks rhetorically, "Why have special provisions relating to the *691 First Claim unless the First decision was going to have special significance?" and Board contends that the issue in this case is "Did the Legislature intend that each school district, each city, each county, each special district in California could demand a hearing, with evidence and argument for and against, with the State interests represented by the Department of Finance and appropriate State Department on each statute enacted or regulation adopted?" This argument misconstrues District's contentions and does not properly state the issue.

FN7 "2253.2. (a) The Board of Control shall, within ten days after receipt of the first claim based upon each chaptered bill or executive order as described in subdivisions (b) and (d) of Section 2253, set a date for a public hearing on such claim within a reasonable time. Such claims shall be submitted in a form prescribed by the board. After a hearing in which the claimant and any other interested organization or individual may participate, the board, if it determines a cost was mandated, shall adopt parameters and guidelines for reimbursement of any claims relating to such bill or executive order. A local agency, school district, and the state may file a claim or request with the board to amend, modify, or supplement such parameters or guidelines. The board may, after due public

notice and hearing, amend modify, or supplement such parameters and guidelines.
"

.....
"(d) The Legislature declares that the purpose of this section is to encourage local agencies and school districts to file claims for reimbursement with much more advance knowledge of the extent of possible reimbursement and to provide for a more expeditious and efficient claims process." (Stats. 1978, ch. 794, § 10 [the section number should be 7], pp. 2549-2550, 2551.)

District does not contend that Board was required to hold another public hearing for all interested persons pursuant to former section 2253.2, subdivision (a), before denying District's claim. A new hearing would be required only if District is successful in this litigation on the question of interpretation of the Cal OSHA law, because then Board would be required to "adopt parameters and guidelines for reimbursement of any claims relating to such bill or executive order."

As argued by District, former section 2253.2, subdivision (a), serves the administrative convenience of Board by eliminating any suggestion of a requirement for elaborate repetitive hearings involving the same chapter or executive order or regulation. By its context, that subdivision was adopted primarily for cases in which Board "determines a cost *was* mandated." (Italics added.) Adopting parameters and guidelines facilitates routine processing of claims of other districts and local agencies under the same bill or executive order pursuant to former sections 2231 and 2255. Conversely, where Board's decision on the first claim is that no reimbursable costs are mandated, Board may properly rely on that decision to deny the claims of other school districts or local agencies relating to such chapter, and need not hold a repetitive public hearing. But nothing in that procedure indicates an intent to foreclose claimants from access to the judiciary to review a question of law and statutory interpretation, namely, whether the Cal OSHA law mandated a new program or increased level of service as defined *692 in [section 2207.5](#). According to Board's theory, if Board erred as a matter of law in interpreting the statute on the first claim by the San Jose School District, but the San Jose School District did not seek judicial review, that error of law must be perpetuated and hundreds of school districts and local agencies must be denied legitimate reimbursement because no one else has standing to seek judicial

review when Board denies their claim on that basis. We find nothing in the statutory scheme which compels such a startling result.

Board's contention that District's interpretation would flood the courts with multiple litigation is unfounded. A *judicial* interpretation whether the statute mandates reimbursable costs could become a matter of binding precedent which would forestall multiple litigation. Furthermore, since the San Jose School District did not seek judicial review, and District is the first to do so, there has been no multiple litigation.

(4) Finally, Board contends that District should be collaterally estopped to challenge Board's interpretation, in the manner "the state" was held estopped in [Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d at pages 534-536](#). There is no merit to this analogy. In *Carmel Valley*, after a hearing in which state agencies participated, the Board of Control held that certain costs were reimbursable. The state did not seek judicial review of that determination within a three-year statute of limitations. Here, on the other hand, District promptly sought judicial review after the denial of its claim. In *Carmel Valley* the state further acquiesced in the Board's findings by seeking an appropriation in the Legislature to satisfy the validated claims. There was no such acquiescence here. Finally, all the various school districts and local agencies who file claims for reimbursement of state mandated costs cannot reasonably be considered in the same kind of "privity" as state agencies who were held to constitute "the state" in *Carmel Valley*.

(1d) We conclude the trial court erred in holding that District has no right to seek judicial review of the denial of its claim. [FN8] *693

FN8 As we understand District's position, it contends the trial court erred in refusing to consider the question of law whether Statutes 1973, chapter 993, *itself* comes within the meaning of [section 2207.5](#). We assume District does not contest that portion of the trial court's judgment which holds that District has not adequately pleaded specific *executive orders and regulations* pertaining to Cal OSHA which might contain state mandated costs.

The judgment is reversed and the cause remanded

for further proceedings consistent with the views expressed in this opinion. Costs on appeal are awarded to District.

Feinerman, J., [FN*] and Hastings, J., [FN†] concurred. *694

FN* Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

FN† Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

Cal.App.2.Dist.,1988.

Los Angeles Unified School Dist. v. State

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H

COUNTY OF LOS ANGELES, Plaintiff and
 Appellant,
 v.
 DEPARTMENT OF INDUSTRIAL RELATIONS et
 al., Defendants and Respondents

No. C005023.

Court of Appeal, Third District, California.

Oct 27, 1989.

SUMMARY

After the State Board of Control denied a county's claim for reimbursement of costs incurred in complying with certain elevator safety regulations promulgated by the California Occupational Safety and Health Administration, the county sought mandamus, declaratory, and injunctive relief in the superior court. The court granted the state's motion for summary judgment. (Superior Court of Sacramento County, No. 315287, Darrel W. Lewis, Judge.)

The Court of Appeal affirmed. It held principles of administrative collateral estoppel did not preclude the state from challenging a prior decision of the Board of Control finding such costs were a reimbursable state-mandated program under Cal. Const., art. XIII B, and [Rev. & Tax. Code, § § 2207 and 2231](#). The court also held that providing elevators equipped with fire and earthquake safety features is not "a governmental function of providing services to the public" such as to make a county's costs of complying with state safety regulations requiring those features in all elevators reimbursable as a state-mandated program. (Opinion by Carr, J., with Puglia, P. J., and DeCristoforo, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#)) State of California § 12--Fiscal Matters--
 Appropriations-- Mandated Costs--Reimbursable

Programs.

Costs incurred by local governments in carrying out state-mandated programs are reimbursable under Cal. Const., art. XIII B, only if they are programs that carry out the governmental function of providing services to the public, or *1539 laws that, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

[See [Cal.Jur.3d, State of California, § 78](#).]

([2a](#), [2b](#)) Administrative Law § 73--Adjudication--
 Operation and Effect of Decisions and Orders--
 Collateral Estoppel--Effects of Supreme Court
 Decision.

Principles of administrative collateral estoppel did not preclude the state from challenging a prior decision of the State Board of Control, finding that certain state elevator safety regulations were a reimbursable state-mandated program (Cal. Const., art. XIII B; [Rev. & Tax. Code, § § 2207, 2231](#)). Even if all the elements for collateral estoppel were present, the earlier finding predated by eight years the Supreme Court's enunciation of the definitions for such programs, and nothing in the record of the earlier decision suggested the board considered the program criteria later stated by the Supreme Court.

(3) Judgments § 81--Res Judicata--Collateral
 Estoppel--Criteria for Application.

Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. For the doctrine to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved.

[See [Am.Jur.2d, Judgments, § 415](#) et seq.]

(4) Administrative Law § 73--Adjudication--
 Operation and Effect of Decisions and Orders--
 Collateral Estoppel--Requisites.

Collateral estoppel applies to prior administrative adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims.

(5a, 5b) Elevators and Escalators § 2--Safety Regulations--County Program as State Mandate.

Providing elevators equipped with fire and earthquake safety features is not "a governmental function of providing services to the public" nor a "unique requirement" imposed on local governments, such as to make a county's costs of complying with safety regulations requiring those features in all elevators in California reimbursable as a state-mandated program under Cal. Const., art. XIII B, and [Rev. & Tax. Code, § § 2207](#) and [2231](#). *1540

COUNSEL

De Witt W. Clinton, County Counsel, and Paul T. Hanson, Deputy County Counsel, for Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, Richard M. Frank and Linda A. Cabatic, Deputy Attorneys General, for Defendants and Respondents.

CARR, J.

In this appeal from summary judgment in favor of defendant State Department of Industrial Relations (State), plaintiff County of Los Angeles (County) asserts rights to reimbursement for programs alleged to be state mandated. County filed a complaint and petition for mandate claiming reimbursement from State for costs incurred in complying with new elevator earthquake and fire safety regulations promulgated by the California Occupational Safety and Health Administration (OSHA). The trial court concluded these regulations did not constitute a state-mandated program requiring reimbursement and entered summary judgment for State.

County urges three alternative bases of recovery on appeal: (1) principles of administrative collateral estoppel preclude State from relitigating whether the safety regulations amount to a state-mandated program; (2) even if State is not bound by an earlier administrative decision, the definition of "program" articulated in [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*Los Angeles*) and relied upon by the trial court is inapplicable to this case; and (3) even if *Los Angeles* applies, the OSHA regulations fit its definition. [FN1] We disagree with each claim and shall affirm the judgment.

FN1 The first portion of County's brief is devoted to arguing a nonissue, i.e., why a separation of powers issue is not pertinent to this appeal. As the trial court granted summary judgment in favor of State, it did not decide how to order reimbursement or provide other relief without impinging on the Legislature's authority. County is right - the separation of powers question is irrelevant and we do not consider it.

Factual and Procedural Background

In 1975, OSHA added or amended numerous elevator fire and earth-quake safety measures in [title 8 of the California Code of Regulations](#) (i.e., § § 3014, subds. (c), (d), 3015, subd. (c), 3030, subds. (f), (k), 3032, subds. *1541 (a), (c), 3034, subd. (a), 3041, subds. (c), (d), 3053, subd. (c), and 3111, subd. (c).) [FN2] These regulations applied to all elevators, whether publicly or privately owned.

FN2 The regulations in question outline various safety measures such as (1) the securing of machinery and equipment, (2) elevator car enclosures, (3) emergency operations, and (4) the installation of guide rails, supports and fastenings.

At the time relevant herein, reimbursement provisions for expenses incurred in complying with state-mandated local programs were embodied in [Revenue and Taxation Code sections 2201](#) et seq. [Revenue and Taxation Code section 2231](#), subdivision (a) provided in part: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in [Section 2207](#)." (Stats. 1978, ch. 794, § 1.1, p. 2546.) That section stated: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973." (Stats. 1977, ch. 1135, § 4, p. 3646.) [FN3]

FN3 [Revenue and Taxation Code section 2231](#) was repealed in 1986 (Stats. 1986, ch. 879, § 23, p. 3045) and reenacted as [Government Code section 17561](#) (Stats. 1986, ch. 879, § 6, pp. 3041-3042). The definition of "costs mandated by the state" is now embodied in [Government Code section 17514](#) and provides: "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)."

In 1979, voters enacted Proposition 4, adding [article XIII B to the California Constitution, Section 6](#) of that article provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This provision became effective July 1, 1980. (See [Cal. Const., art. XIII B, § 10.](#)) *1542

These statutory and constitutional provisions granted relief to local governments whose powers to raise property taxes had been curtailed but who were still subject to increased expenses through the imposition of statemandated local programs. ([Lucia Mar Unified School Dist. v. Honig \(1988\) 44 Cal.3d 830, 835-836 \[244 Cal.Rptr. 677, 750 P.2d 318\].](#)) The state was now required to reimburse local governments for costs associated with these programs.

In 1979, the City and County of San Francisco sought reimbursement for the costs of complying with the elevator fire and earthquake safety regulations. The State Board of Control (Board) approved the claim, adopted "parameters and

guidelines," and also adopted "statewide cost estimates" for these regulations. State did not seek review of the Board's decision although authorized to do so by former Revenue and Taxation Code section 2253.5 (Stats. 1978, ch. 794, § 8, p. 2551).

Despite the Board's decision, the Legislature did not appropriate funds for reimbursement, finding the elevator earthquake safety regulations did not impose reimbursable state-mandated costs. (Stats. 1982, ch. 1586, § 10, p. 6268.) The Legislature further stated it could not determine whether the elevator fire safety regulation imposed a reimbursable state-mandated cost and declared the operation of the regulation suspended "until a court determines whether this provision contains a mandate reimbursable under [Section 2231 of the Revenue and Taxation Code](#)." (Stats. 1982, ch. 1586, § 11, p. 6268.)

County subsequently filed a claim with the Board for reimbursement of costs already incurred in complying with the fire safety regulation and those anticipated in complying with the earthquake safety provisions. The Board informed County of the Legislature's decision not to provide subvention of funds for costs incurred in association with these OSHA regulations and denied the claim.

In October 1983, County filed its petition for writ of mandate and a complaint for declaratory and injunctive relief, and trial was eventually set for July 1988. In April 1988, State moved for summary judgment, asserting the elevator safety regulations did not meet the definition of "program" recently articulated in [Los Angeles, supra, 43 Cal.3d 46](#). In that case, the Supreme Court considered whether local governments were entitled to reimbursement for costs incurred in complying with legislation increasing workers' compensation benefit payments. (1a) The court held programs were reimbursable under [article XIII B](#) only if they were "programs that carry out the governmental function of providing services to the public, or *1543 laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56.) The court concluded [article XIII B](#) "has no application to, and the State need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive." (*Id.* at pp. 57-58, fn. omitted.)

Relying on [Los Angeles](#), State asserted the

regulations did not constitute a "program" requiring reimbursement for costs incurred because they (1) applied to all elevators, both publicly and privately owned, and (2) did not require County to carry out a governmental function of providing services to the public. County disagreed, urging the *Los Angeles* definition was met and, further, that State was estopped to challenge the Board's earlier finding that the regulations imposed a reimbursable state-mandated cost. The trial court granted State's motion for summary judgment; this appeal followed. We shall affirm.

Discussion I

(2a) County asserts principles of administrative collateral estoppel preclude State from challenging the Board's earlier decision finding the elevator safety regulations to be a reimbursable state-mandated program. County errs.

In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795] (*Carmel Valley*), the court considered whether costs incurred in purchasing protective clothing and equipment for firefighters as required by new administrative regulations were state-mandated costs entitling the county to reimbursement. The court found the State was precluded from relitigating the issues of state mandate and amount of reimbursement because the Board had previously decided these issues in ruling on the county's claim and the State by failing to seek judicial review of the Board's decision waived its right to contest the Board's findings. (*Id.* at p. 534.) In reaching this conclusion, the court relied, inter alia, on principles of administrative collateral estoppel, which the court described as follows:

(3) "Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must be the same, the prior *1544 proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People v. Sims* (1982) 32 Cal.3d 468, 484 [1].) [¶] The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. (4) Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity;

(2) resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.)" (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 534-535.)

Although administrative collateral estoppel precluded the relitigation of certain issues, the *Carmel Valley* court noted the *Los Angeles* decision presented a new issue not previously considered by the Board, whether the regulations constitute the type of "program" requiring subvention of funds under article XIII B, section 6. (*Id.* at p. 537.) The court held, "State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the [*Los Angeles*] rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue." (*Id.* at p. 537, fn. 10.)

(2b) The same principle is applicable in the instant case. Assuming arguendo that all of the elements of administrative collateral estoppel are met, the fact remains that the test claim involving the elevator safety regulations was filed with the Board in 1979, eight years before the *Los Angeles* rule was enunciated by our Supreme Court. Nothing in the record supports any assertion that the Board in 1979 considered if this was a program within the meaning of *Los Angeles*. Indeed the Board would have been preternaturally prescient if it had done so. State was free to raise the "program" question in its motion for summary judgment and we turn now to that issue.

II

(5a) County asserts the *Los Angeles* decision does not apply to this case or, if it does, that the elevator safety regulations are a "program" as defined by *Los Angeles*. Both contentions are without merit. *1545

County attempts to distinguish *Los Angeles* from the case at bar by relying on two differences: (1) in *Los Angeles*, the Board ruled against the local governments but here the Board ruled in County's favor; and (2) in *Los Angeles*, the court's ruling was compelled to avoid finding an implied repeal of the state constitution's provisions relating to worker's compensation; and here no constitutional problems

are presented. County provides no further analysis of these distinctions and we find them meaningless. (1b) *Los Angeles* clearly established a definition of "program" to be used in determining whether reimbursement must be provided under [article XIII B](#), and we are bound to follow that ruling. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [20 Cal.Rptr. 321, 369 P.2d 937].)

As noted, the *Los Angeles* court established two alternative meanings for the term "programs." Programs are reimbursable under [article XIII B](#) if they are "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Los Angeles, supra*, 43 Cal.3d at p. 56.)

(5b) County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. [FN4] As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles*.

FN4 An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.

Nor is the first definition of "program" met. County submitted a declaration by deputy county counsel providing: "It is my opinion that all of the buildings owned or leased by County are used for 'peculiarly governmental functions' or are used by County for purposes mandated by state law [¶] It is my opinion, ... that in all buildings owned or leased by County which have elevators, those elevators are strictly necessary for the purposes [just] described. In other words, without those elevators no peculiarly governmental functions and no purposes mandated on County by State law could be performed in those County buildings. ... It is my opinion that federal and state laws and court decisions about access for handicapped persons require elevators in all public buildings of more than one story." These thoughts had occurred to counsel only shortly before County's opposition to the summary judgment motion was due to be filed.

County asserts this declaration "proves that all passenger elevators in all county buildings are necessary for the performance of *peculiarly governmental *1546 functions* by County including *duties mandated on County by State.*" (Italics in original.) Even if we were to treat the submitted declaration as something more than mere opinion, County has missed the point. The regulations at issue do not mandate elevator service; they simply establish safety measures. In determining whether these regulations are a program, the critical question is whether the *mandated program* carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." [FN5]

FN5 This case is therefore unlike *Lucia Mar, supra*, 44 Cal.3d 830, in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835) and *Carmel Valley, supra*, where the court reached a similar conclusion regarding [fire protection services](#). (190 Cal.App.3d at p. 537.)

As the regulations in question do not meet the definition of "program" established by *Los Angeles*, County was not entitled to reimbursement for costs incurred in complying with these provisions and the court properly granted State's motion for summary judgment.

Disposition

The judgment is affirmed. State to recover costs.

Puglia, P. J., and DeCristoforo, J., concurred.

Appellant's petition for review by the Supreme Court was denied January 17, 1990. *1547

Cal.App.3.Dist.,1989.

County of Los Angeles v. Department of Indus. Relations

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CITY OF SACRAMENTO et al., Plaintiffs and
 Appellants,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents

No. S006188.

Supreme Court of California

Jan 29, 1990.

SUMMARY

A city and a county filed claims with the State Board of Control seeking subvention of the costs imposed on them by Stats. 1978, ch. 2, which extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. The board denied the claims, ruling that Stats. 1978, ch. 2, did not enact a state-mandated program for which reimbursement was required under Cal. Const., art. XIII B. On mandamus the trial court overruled the board and found the cost reimbursable, and the Court of Appeal affirmed. On remand, the board determined the amounts due on the claims originally submitted; however, the Legislature failed to appropriate the necessary funds for disbursement. The city then commenced a class action against the state on behalf of all local governments in the state. The complaint sought injunctive and declaratory relief barring enforcement of Stats. 1978, ch. 2, in the absence of state subvention; a writ of mandate directing that past, current, and/or future subvention funds be appropriated and disbursed, and/or that the Employment Development Department pay local agencies' past, current, and future unemployment insurance contributions from its own budget; and damages for past failures to reimburse. The trial court granted summary judgment for the state. (Superior Court of Sacramento County, No. 331607, Darrel W. Lewis, Judge.) The Court of Appeal, Third Dist., No. C002265, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the trial court did not err in granting summary judgment for the

state on the ground that the local costs of providing unemployment insurance coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former § § 2207, 2231, subd. (a); [Gov. Code, § § 17514, 17561](#), subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. However, the court held, Stats. 1978, ch. 2, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restraining local *52 taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. (Opinion by Eagleson, J., with Lucas, C. J., Mosk, Broussard, Panelli and Kennard, JJ., concurring. Separate concurring and dissenting opinion by Kaufman, J., concurring in the judgment.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Property Taxes § 7.5--Constitutional Provisions; Statutes and Ordinances--Real Property Tax Limitation--Exemptions for Federally Mandated Costs.

To the extent that a "federally mandated" cost is exempt from prior statutory limits on local taxation, Cal. Const., art. XIII A, restricting the assessment and taxing powers of state and local governments, eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.

(2) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Exhaustion of Remedies.

A class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, was not barred by any failure of plaintiffs to

exhaust their remedies. The city and a county had filed timely claims for reimbursement of expenses incurred, to comply with Stats. 1978, ch. 2. When the State Board of Control initially denied the claims, the city and the county pursued judicial remedies, culminating in a Court of Appeal opinion concluding that reimbursement was required. The board then upheld the claims. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement, the city and the county were authorized to bring an enforcement action.

(3a, 3b) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Remedies Available.

[Cal. Const., art. XIII, § 32](#), precluding any suit to enjoin or impede collection of a tax, did not bar a class action brought by a city *53 on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B. The state contended that the only remedy open to the city was to pay its unemployment "taxes" and then seek a "refund" under the "exclusive" procedures set forth in the Unemployment Insurance Code. However, the city was not challenging, directly or indirectly, the validity or application of the unemployment insurance law as such, or the propriety of any "tax" assessed thereunder; rather, it claimed that all its costs of affording unemployment compensation to its employees were subject to a statutory and constitutional subvention that the state refused to make. For the same reasons, the city's claim for reimbursement for past expenses was not barred.

(4) Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power.

Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds.

[See [Am.Jur.2d, Constitutional Law, § 316](#).]

(5a, 5b, 5c) Judgments § 81--Res Judicata--Collateral Estoppel-- Public-interest Exception--Reimbursement to Local Governments for Unemployment Insurance Costs.

In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the state was not collaterally estopped from litigating the reimbursement issue. The city and a county had previously brought an action against the state, culminating in a Court of Appeal opinion concluding that reimbursement was required. The Legislature then declined to appropriate the necessary funds for disbursement. Even if the formal prerequisites for collateral estoppel were present, the public-interest exception to that doctrine governed, since strict application of the doctrine would foreclose any reexamination of the earlier holding, and the consequences of any error transcended those that would apply to mere private parties. *54

(6) Judgments § 81--Res Judicata--Collateral Estoppel--Questions of Law.

Generally, collateral estoppel bars a party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. However, when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed.

(7) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Summary Judgment--Effect of Failure of Moving Party to Challenge Prior Summary Adjudication of Issues.

In a class action by a city, on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the trial court did not lack the power to grant summary judgment for the state on the authority of a newly decided California Supreme Court case. The trial court had previously granted the city's motion for summary adjudication of issues, and the state had failed to seek timely mandamus review of that prior, contrary order. However, failure to challenge a

summary adjudication order by the discretionary avenue of writ review cannot foreclose a party from asserting subsequent changes in law that render such a pretrial order incorrect.

(8) Judgments § 68--Res Judicata--Identity of Parties--Class Action--Where Prior Action Involved Individual Claims.

In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, res judicata did not preclude examination of an earlier Court of Appeal opinion, in an action by the city and a county, concluding that reimbursement was required. The issues presented in the current action were not limited to the validity of any finally adjudicated individual claims; rather, they encompassed the question of the state's subvention obligations in general under Stats. 1978, ch. 2.

(9a, 9b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Programs--Unemployment Insurance *55 Costs.

In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Cal. Const., art. XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former § § 2207, 2231, subd. (a); [Gov. Code, § § 17514, 17561](#), subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. The phrase, "To force programs on local governments," in the voters' pamphlet relating to [Cal. Const., art. XIII B, § 6](#), confirmed that the intent underlying that section was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of

laws that apply generally to all state residents and entities.

[See [Cal.Jur.3d, State of California, § 78](#).]

(10) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Programs.

The concepts of reimbursable state-mandated costs in Cal. Const., art. XIII B, requiring that the state reimburse local governments for the costs of state-mandated new programs or higher levels of service, and Rev. & Tax. Code, former § § 2207, 2231, are identical.

(11a, 11b, 11c) State of California § 11--Fiscal Matters-- Reimbursement to Local Governments-- Federally Mandated Programs--Unemployment Insurance Costs.

Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restricting local taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. In enacting Stats. 1978, ch. 2, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses; the alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal *56 standards. (Disapproving, insofar as it is inconsistent with this analysis, the decision in [City of Sacramento v. State of California \(1984\) 156 Cal.App.3d 182 \[203 Cal.Rptr. 258\]](#).)

(12) Constitutional Law § 11--Construction of Constitutions--Liberality and Flexibility.

Constitutional enactments must receive a liberal, practical commonsense construction that will meet changed conditions and the growing needs of the people. While a constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words, the literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

(13) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Programs.

In determining whether a program is federally mandated, to exempt its cost from a local government's statutory taxation limit ([Rev. & Tax. Code, § 2271](#)), and to exclude any appropriation required to comply with the mandate from the constitutional spending limit of the affected entity ([Cal. Const., art. XIII B, § 9](#), subd. (b)), the result will depend on the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. The courts and the Commission on State Mandates must respect the governing principle of [Cal. Const., art. XIII B, § 9](#), subd. (b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

COUNSEL

James P. Jackson, City Attorney, and William P. Carnazzo, Deputy City Attorney, for Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Paul H. Dobson, Richard M. Frank, Floyd D. Shimomura and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

De Witt W. Clinton, County Counsel (Los Angeles), Amanda F. Susskind, Deputy County Counsel, Kitt Berman, Ross & Scott and William D. Ross as Amici Curiae on behalf of Defendants and Respondents.
*57

EAGLESON, J.

In response to changes in federal law, chapter 2 of the Statutes of 1978 (hereafter chapter 2/78) extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. Here we consider whether, in chapter 2/78, the state "mandate[d] a new program or higher level of service" on the local agencies, and must therefore reimburse local compliance costs under article XIII B of the California Constitution and related statutes.

We conclude that the state is *not* required to reimburse the chapter 2/78 expenses of local

governments. The obligations imposed by chapter 2/78 fail to meet the "program" and "service" standards for mandatory subvention we recently set forth in [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46 \[233 Cal.Rptr. 38, 729 P.2d 202\]](#) (hereafter *County of Los Angeles*). Chapter 2/78 imposes no "unique" obligation on local governments, nor does it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, must therefore be reversed.

However, our holding does not leave local agencies powerless to counter the fiscal pressures created by chapter 2/78. Though provisions of the Revenue and Taxation Code limit local property tax levies, and article XIII B itself places spending limits on both state and local governments, "costs mandated by the federal government" are expressly excluded from these ceilings. Chapter 2/78 imposes such "federally mandated" costs, because it was adopted by the state under federal coercion tantamount to compulsion. Hence, subject to overriding limitations on taxation rates (see, e.g., Cal. Const., art. XIII A), both state and local governments may levy and spend for their chapter 2/78 coverage obligations without reduction of the fiscal limits applicable to other needs and services.

I. Facts.

In 1972, and again in 1973, the Legislature enacted comprehensive schemes for local property tax relief. Though frequently amended thereafter, these statutes retained three principal features. First, they placed a limit on the local property tax rate. Second, they required the *state* to reimburse local governments for their costs resulting from state laws "which mandate ... new program[s] or ... increased level[s] of service" at the local level. Finally, they allowed local governments to exceed their property taxation limits to fund certain other nondiscretionary expenses, including "costs mandated by the federal government." (Stats. 1972, ch. 1406, § 14.7, pp. *58 2961-2967; Stats. 1973, ch. 358, § 3, pp. 783-790; [Rev. & Tax. Code, §§ 2206, 2260](#) et seq., [2271](#); former § § 2164.3, 2165, 2167, 2169, 2207, 2231; [Gov. Code, § 17500](#) et seq.)

Since adoption of the Social Security Act in 1935, federal law has provided powerful incentives to enactment of unemployment insurance protection by the individual states. In current form, the Federal Unemployment Tax Act (hereafter FUTA) ([26 U.S.C. § 3301](#) et seq.) assesses an annual tax upon the gross

wages paid by covered private employers nationwide. The tax rate, which has varied over the years, stands at 6.2 percent for calendar year 1990. ([26 U.S.C. § § 3301\(1\), 3306.](#)) However, employers in a state with a federally "certified" unemployment insurance program may credit their contributions to the state system against up to 90 percent of the federal tax (currently computed at 6 percent for this purpose). (*Id.*, § § 3302-3304.) A "certified" state program also qualifies for federal administrative funds. ([42 U.S.C. § § 501-503.](#))

California enacted its unemployment insurance system "on the eve of the adoption of the Social Security Act" in 1935 (*Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 587-588 [81 L.Ed. 1279, 1291-1292, 57 S.Ct. 883, 109 A.L.R. 1293]; see Stats. 1935, ch. 352, § 1 et seq., p. 1226 et seq.) and has sought to maintain federal compliance ever since. Every other state has also adopted an unemployment insurance plan in response to the federal stimulus.

In 1976, Congress enacted [Public Law number 94-566](#) (hereafter [Public Law 94-566](#)). Insofar as pertinent here, [Public Law 94-566](#) amended FUTA to require for the first time that a "certified" state plan include coverage of the employees of public agencies. ([Pub.L. No. 94-566](#) (Oct. 20, 1976) § 115(a), 90 Stat. 2670; [26 U.S.C. § § 3304\(a\)\(6\)\(A\), 3309\(a\)](#); see [26 U.S.C. § 3306\(c\)\(7\)](#).) States which did not alter their unemployment compensation laws accordingly faced loss of the federal tax credit and administrative subsidy.

The Legislature thereafter adopted chapter 2/78 to conform California's system to [Public Law 94-566](#). Among other things, chapter 2/78 effectively requires the state and all local governments, beginning January 1, 1978, to participate in the state unemployment insurance system on behalf of their employees. (Stats. 1978, ch. 2, § § 12, 24, 31, 36.5, 58-61, pp. 12-14, 16, 18, 24-27; [Unemp. Ins. Code, § § 135](#), subd. (a), 605, 634.5, 802-804.)

In November 1979, the voters adopted Proposition 4, adding article XIII B to the state Constitution. (1) (See fn. 1.) Article XIII B - the so-called "Gann limit" - restricts the amounts state and local governments may *59 appropriate and spend each year from the "proceeds of taxes." (§ § 1, 3, 8, subds. (a)-(c).) [FN1] In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of

service on any local government," (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).) Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly." (§ 9, subd. (b) [hereafter [section 9\(b\)](#)], italics added.)

FN1 Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Moreover, to the extent "federally mandated" costs are exempt from prior *statutory* limits on local *taxation* (see *ante*, at pp. 57-58), article XIII A eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.

All further section references are to article XIII B of the California Constitution, unless otherwise indicated.

The City of Sacramento (City) and the County of Los Angeles (County) filed claims with the State Board of Control (Board) (see Rev. & Tax. Code, former § 2250 et seq.; see now [Gov. Code, § 17550](#) et seq.) seeking state subvention of the costs imposed on them by chapter 2/78 during 1978 and portions of 1979. The Board denied the claims, ruling that chapter 2/78 was an enactment required by federal law and thus was not a reimbursable state mandate. On mandamus ([Code Civ. Proc., § 1094.5](#); Rev. & Tax. Code, former § 2253.5; see now [Gov. Code, § 17559](#)), the Sacramento Superior Court overruled the Board and found the costs reimbursable. The court ordered the Board to determine the amounts of the City's and the County's individual claims, and also to adopt "parameters and guidelines" to be applied in determining "these ... and other claims" arising under chapter 2/78. (Rev. & Tax. Code, former § 2253.2; see now [Gov. Code, § § 17555, 17557](#).) [FN2]

FN2 The claims for reimbursement were originally premised entirely on [Revenue and Taxation Code section 2201](#) et seq. While the City's and the County's mandamus petitions were pending in superior court, article XIII B was adopted. The City and the County amended their petitions to include article XIII B as an additional basis for relief, and the case proceeded accordingly.

In [City of Sacramento v. State of California \(1984\) 156 Cal.App.3d 182 \[203 Cal.Rptr. 258\]](#) (hereafter *Sacramento I*), the Court of Appeal affirmed. Among other things, the court concluded (pp. 194-199) that chapter 2/78 *60 imposed *state*-mandated costs reimbursable under [section 6 of article XIII B](#), since the potential loss of federal funds and tax credits did not render [Public Law 94-566](#) so coercive as to constitute a "[*mandate*] ... of the *federal* government" under [section 9\(b\)](#). (Italics added.) We denied hearing.

On remand, the Board determined the amounts due on the claims originally submitted by the City and the County. As required by the judgment, the Board also adopted "parameters and guidelines" for reimbursement of chapter 2/78 costs to all affected local agencies. However, during the 1984 session of the Legislature, no bills were introduced for reimbursement of pre-1984 costs, and bills to fund costs in and after 1984 failed passage.

From and after the decision in *Sacramento I*, the City paid "under protest" its quarterly billings from the Employment Development Department (EDD) for unemployment compensation. Each payment included a claim for refund of unemployment taxes pursuant to [Unemployment Insurance Code section 1176](#) et seq. EDD responded to the refund claims by referring the City to its statutory subvention remedies.

Accordingly, in July 1985, the City began returning its quarterly billings unpaid. It thereupon commenced the instant class action in Sacramento Superior Court on behalf of all local governments in the state. Named as defendants were the State of California, the Governor, EDD, the state Controller and Treasurer, and the Legislature. The complaint sought (1) injunctive and declaratory relief barring enforcement of chapter 2/78 in the absence of state subvention; (2) a writ of mandate directing that past, current, and future subvention funds be appropriated and disbursed, and/or that EDD pay local agencies' past,

current, and future unemployment-insurance contributions from its own budget; and (3) damages for past failures to reimburse.

Shortly after this suit was filed, the Legislature appropriated some chapter 2/78 funds for fiscal year 1984-1985 (Stats. 1985, ch. 1217, § 12, 17, subd. (b), pp. 4148, 4150), and it subsequently authorized limited funds in the 1986 Budget Act (Stats. 1986, ch. 186, § 2.00, p. 1006). On defendants' demurrer, the trial court later dismissed plaintiffs' claims for reimbursement for these post-1984 periods. [FN3] Thereafter, the trial court certified the suit as a class action and granted plaintiffs' motion for summary adjudication of issues based on *Sacramento I*. *61

FN3 The trial court also sustained the Legislature's demurrer without leave to amend and dismissed the Legislature as a party defendant. The Court of Appeal affirmed the dismissal in a separate proceeding. (See [City of Sacramento v. California State Legislature \(1986\) 187 Cal.App.3d 393 \[231 Cal.Rptr. 686\]](#).)

While the case remained pending at the trial level, we decided *County of Los Angeles*. There we held that [article XIII B](#), and earlier subvention statutes, requires state reimbursement *only* when the state compels local governments to provide new or upgraded "programs that carry out the governmental function of providing *services to the public*, or ..., to implement a state policy, [the state] impose[s] *unique* requirements on local governments [that] do not apply generally to all residents and entities in the *state*." (43 Cal.3d at p. 56, italics added.)

Defendants in this case thereupon moved for summary judgment, urging that extension of unemployment insurance coverage to public employees satisfied neither reimbursement standard set forth in *County of Los Angeles*. The trial court agreed and awarded summary judgment.

The Court of Appeal reversed on two independent grounds. First, the court ruled that defendants were collaterally estopped by *Sacramento I* to relitigate the reimbursability of chapter 2/78 costs. Second, the court found that chapter 2/78 imposed "unique requirements" on local governments, within the meaning of *County of Los Angeles*, since the legislation was aimed solely at local agencies and subjected them to obligations from which they were

previously exempt.

II. Jurisdiction; Plaintiffs' Exhaustion of Remedies.

(2) After we granted review, we asked the parties and amici curiae [FN4] to brief whether the current suit is jurisdictionally barred by any failure of plaintiffs to exhaust their remedies (see *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291-295 [109 P.2d 942, 132 A.L.R. 715]), or for any other reason. If so, the summary judgment for defendants against all plaintiffs was proper notwithstanding the merits of the subvention claim. In that event, the judgment of the Court of Appeal must be reversed without consideration of the substantive issues raised by the appeal.

FN4 Amicus curiae briefs were filed on behalf of plaintiffs by (1) the League of California Cities, the Association of California Water Agencies, and the Fire District Association of California, and (2) the County of Los Angeles and the County Supervisors Association of California.

However, we find no failure to exhaust which would bar us from reaching the merits. Defendants concede plaintiffs exhausted all administrative remedies provided by the statutes governing subvention of state-mandated costs. The concession appears correct, at least as to the City and the County. These two agencies filed timely claims for reimbursement of expenses incurred to comply with chapter 2/78. When the Board initially denied the claims, the City and the County pursued judicial remedies culminating in *62 *Sacramento I*. By direction of the judgment in *Sacramento I*, the Board ultimately upheld the City's and County's 1979 claims, determined their amount, and adopted "parameters and guidelines" for statewide reimbursement that were later included in the Board's government-claims report to the Legislature. (Rev. & Tax. Code, former § 2253.2, 2255, subd. (a).)

These procedures exhausted the City's and the County's administrative and judicial avenues, short of this suit, to obtain redress on the claims adjudicated in *Sacramento I*. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement by the Controller, the City and the County were authorized to bring an enforcement action. (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b); County of Contra

Costa v. State of California (1986) 177 Cal.App.3d 62, 72 [222 Cal.Rptr. 750]; see *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 548-549 [234 Cal.Rptr. 795]. [FN5]

FN5 In 1986, the Legislature repealed sections 2250-2255 of the Revenue and Taxation Code. (Stats. 1986, ch. 879, § 37-48, p. 3047.) The Board's functions have been transferred to the Commission on State Mandates (Commission), but the procedures for administrative and judicial determination of subvention disputes remain functionally similar. (Gov. Code, § 17500 et seq., 17600 et seq.)

(3a) Defendants urge, however, that plaintiffs essentially are seeking resolution of a "tax" question - the validity *vel non* of their unemployment tax contributions - but have failed to satisfy the special procedures applicable to such cases. Defendants insist that because article XIII, section 32, of the California Constitution broadly precludes any suit to enjoin or impede collection of a tax (e.g., *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 838-841 [258 Cal.Rptr. 161, 771 P.2d 1247]; *Western Oil & Gas Assn. v. State Bd. of Equalization* (1987) 44 Cal.3d 208, 213 [242 Cal.Rptr. 334, 745 P.2d 1360]; *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 279-284 [165 Cal.Rptr. 122, 611 P.2d 463]), plaintiffs' claims for declaratory and injunctive relief are barred.

The only remedy constitutionally open to plaintiffs, defendants assert, is to pay their unemployment "taxes" and then seek a "refund" under the "exclusive" procedures set forth in the Unemployment Insurance Code. (Unemp. Ins. Code, § 1176 et seq., 1241, subd. (a).) Insofar as plaintiffs' complaint *does* seek reimbursement for past contributions, defendants suggest, plaintiffs have not correctly pursued the Unemployment Insurance Code procedures.

We question, but do not decide, whether a *public entity's* contributions to the state unemployment insurance system can ever constitute a "tax" subject *63 to article XIII, section 32. Even if so, defendants' claim lacks merit under the circumstances presented here.

"The policy behind [article XIII, section 32] is to allow revenue collection to continue during [tax]

litigation so that essential public services dependent on the funds are not unnecessarily disrupted. [Citation.]" (*Pacific Gas & Electric Co., supra, 27 Cal.3d at p. 283.*) The administrative "refund" procedures established by the unemployment insurance law are designed to ensure initial examination of unemployment tax disputes by the agency with specific expertise in that area.

However, plaintiffs attempt no challenge, direct or indirect, to the validity or application of the unemployment insurance law as such, or to the propriety of any "tax" assessed thereunder. Nor have plaintiffs bypassed the agency or procedures established to decide such disputes.

Rather, plaintiffs claim that *all* their costs of affording unemployment compensation to their employees are subject to a statutory and constitutional *subvention* which the state refuses to make. It is incidental that these costs happen to include what might be characterized as a "tax." As the subvention statutes require, plaintiffs City and County have pursued all available remedies before the agency (formerly the Board, now the Commission) created to decide *subvention* issues; that agency has upheld their submitted claims in full, but the necessary appropriations have been withheld.

Under these circumstances, the Legislature has concluded that a local entity should be forced to continue incurring the unfunded costs subject to "refund." Rather, the entity is expressly authorized to bring suit to declare such an unfunded mandate *unenforceable*. (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b).) [FN6]

FN6 Indeed, when the City filed protective claims for "refund" with EDD in the wake of *Sacramento I*, that agency consistently disclaimed authority to decide the subvention issue presented and "suggest[ed]" that the City pursue its remedies before the Commission.

The importance of such a remedy stems from the fundamental legislative prerogative to control appropriations. (4) Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].) Since the Legislature will have demonstrated its refusal to fund

a particular mandate by the time a mandamus action is filed, the literal "tax refund" process urged by defendants may often be meaningless.

(3b) Insofar as plaintiffs also seek reimbursement for past expenses, similar considerations dictate that the governing statutes are those created *64 to resolve subvention problems rather than garden-variety disputes over the unemployment insurance tax. [FN7] We find nothing in the language, history, or purpose of article XIII, section 32, or of the unemployment insurance law, which bars the instant complaint. We therefore have jurisdiction to decide whether chapter 2/78 constitutes a reimbursable mandate.

FN7 As we note above, courts are powerless to compel appropriations *per se*. However, that fact does not render a prayer for reimbursement of *past* costs wholly meaningless. California courts have previously recognized judicial power to fashion other appropriate reimbursement remedies. (See, e.g., Carmel Valley Fire Protection Dist., supra, 190 Cal.App.3d at pp. 550-552; also cf. Mandel, supra, 29 Cal.3d at pp. 535-537, 539-552.) Such power is especially important where subvention is constitutionally compelled.

III. Collateral Estoppel; Res Judicata.

(5a) However, *plaintiffs* claim that because *Sacramento I* "finally" decided whether chapter 2/78 constitutes a reimbursable state mandate, the *state* and its agents are collaterally estopped from relitigating the issue here. The Court of Appeal agreed that the doctrine of collateral estoppel applies. Under the circumstances, we are not persuaded.

(6) Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 874 [151 Cal.Rptr. 285, 587 P.2d 1098].) "... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.]" (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 902 [160 Cal.Rptr. 124, 603 P.2d 41].)

(5b) Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under [article XIII B](#) and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies. On the other hand, if the state fails to appropriate the funds to meet this *65 obligation, and chapter 2/78 therefore cannot be enforced (Rev. & Tax. Code, former § 2255, subd. (c); [Gov. Code, § 17612](#), subd. (b)), the resulting failure to comply with federal law could cost California employers millions. [FN8] (7) (See fn. 9.), (5c) Under these circumstances, neither stare decisis nor collateral estoppel can permanently foreclose our ability to examine the reimbursability of chapter 2/78 costs. [FN9]

FN8 For these reasons, this case is distinguishable from [Slater v. Blackwood \(1975\) 15 Cal.3d 791 \[126 Cal.Rptr. 225, 543 P.2d 593\]](#), cited by the Court of Appeal. *Slater*, a suit between private parties, held only that the "injustice" exception to the rule of collateral estoppel cannot be based *solely* on an intervening change in the law. (P. 796.) Here, as we note, overriding public-interest issues are involved.

FN9 By the same token, the state has not ignored available remedies or otherwise "waived" its right to argue the issues presented by this appeal. The state immediately raised the applicability of *County of Los Angeles* to this suit once our decision therein became final. Plaintiffs claim the instant trial court had no power to grant summary judgment for defendants on authority of *County of Los Angeles*. Plaintiffs assert that because defendants failed to seek timely mandamus review of the prior, contrary order granting

summary adjudication of issues in *plaintiffs'* favor, the issues decided by the earlier order must be "deemed established." (See [Code Civ. Proc., § 437c](#), subd. (f).) We disagree. Failure to challenge a summary adjudication order by the *discretionary* avenue of writ review cannot foreclose a party from asserting *subsequent* changes in law which render such a pretrial order incorrect.

(8) As below, plaintiffs also argue that reconsideration of *Sacramento I* is precluded by res judicata. They suggest that the prior litigation resolved not only the *legal issues* presented by this appeal, but all *claims* among the current parties as well.

Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. ([Code Civ. Proc., § 1908](#) et seq.; [Slater, supra, 15 Cal.3d at p. 796](#); [Bernhard v. Bank of America \(1942\) 19 Cal.2d 807, 810 \[122 P.2d 892\]](#).) However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78. We therefore conclude that defendants may contend in this lawsuit that chapter 2/78 is not a reimbursable state mandate. [FN10] We turn to the merits of that issue. *66

FN10 Plaintiffs imply that because the original claims by the City and the County were filed decided as statutory "test claims" (Rev. & Tax. Code, former § § 2218, 2253.2; see now [Gov. Code, § § 17555, 17557](#)), the "cause of action" adjudicated therein encompasses *all* claims by *all* local agencies for *all* years. However, the obvious purpose of the statutory "test claim" procedure is to resolve the *legal issue whether particular state legislation creates a reimbursable mandate*, not to adjudicate every individual claim for reimbursement which may thereafter accrue. The "test claim" result has *precedential* effect for all subsequent claims, but res judicata effect only for the individual claims which were actually adjudicated.

IV. "New Program" or "Increased Service"?

(9a) As before, defendants urge that by extending unemployment insurance coverage to local government employees, the Legislature did not mandate a "new program" or an "increased" or "higher level of service" on local governments. Thus, they assert, the local costs of providing such coverage are not subject to subvention under [article XIII B, section 6](#), or parallel statutes. (Rev. & Tax. Code, former § § 2207, 2231, subd. (a); [Gov. Code, § § 17514, 17561](#), subd. (a).) The trial court granted summary judgment for defendants on this basis. Contrary to the conclusions reached by the Court of Appeal, the trial court's ruling was correct.

Our analysis is controlled by our decision in *County of Los Angeles*. There we determined that a general increase in workers' compensation benefits did not, when applied to local governments, constitute a reimbursable state mandate under [article XIII B](#).

In so holding, we focused on the particular language of [article XIII B, section 6](#), which requires state subvention of a local government's costs of any "new program" or "increased level of service" imposed upon it by the state. We dismissed the notion that, by employing the quoted phrases, the voters intended *all* local costs resulting from compliance with state law to be subject to mandatory reimbursement. Rather, we explained, "[t]he concern which prompted the inclusion of [section 6](#) in [article XIII B](#) was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. ..." ([43 Cal.3d at p. 56](#).)

Under these circumstances, we reasoned, the electorate must have intended the undefined terms "new program" and "increased level of service" to carry their "commonly understood meanings ... - programs that carry out the governmental function of providing *services to the public*, or laws which, to implement a state policy, impose *unique requirements* on local governments and do not apply generally to all residents and entities in the *state*." ([43 Cal.3d at p. 56](#), italics added.)

Local governments' costs of complying with a general statewide increase in the level of workers' compensation benefits do not qualify under these standards, we concluded. As we noted, "... [w]orkers'

compensation is not a program administered by local agencies to provide service to the public. (10) (See **fn. 11**.) Although local agencies must provide benefits to *67 their employees ..., they are indistinguishable in this respect from private employers. ..." ([43 Cal.3d at p. 58](#).) [FN11]

FN11 While our discussion centered on the meaning of [section 6 of article XIII B](#), it relied heavily on the legislative history of parallel provisions of the 1972 and 1973 property tax relief statutes. When [article XIII B](#) was adopted in November 1979, the Revenue and Taxation Code already required state subvention of local "[c]osts mandated by the state," defined as "any increased costs which a local agency is required to incur as a result of ... [¶] [a]ny law enacted after January 1, 1973, which mandates a *new program* or an *increased level of service* of an existing program." (Rev. & Tax. Code, former § § 2207 [italics added], 2231, subd. (a).) However, a further statutory definition of "increased level of service" to include any state mandate "which makes necessary expanded or additional costs to a county, city and county, city, or special district" had been repealed in 1975. ([County of Los Angeles, 43 Cal.3d at p. 55](#); see Rev. & Tax. Code, former § 2231, subd. (e), repealed by Stats. 1975, ch. 486, § 6, p. 999.) We found the repealer significant to the limited meaning of the statutory term "increased level of service" as later incorporated in [article XIII B](#). ([43 Cal.3d at pp. 55-56](#).) Our implicit conclusion, which we now make explicit, was that the statutory and constitutional concepts of reimbursable state-mandated costs are identical.

(9b) Similar considerations apply here. By requiring local governments to provide unemployment compensation protection to their own employees, the state has not compelled provision of new or increased "service to the public" at the local level. Nor has it imposed a state policy "unique[ly]" on local governments. Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies "indistinguishable in this respect from private employers."

Plaintiffs nonetheless suggest there are several bases for reaching a different result here than in *County of Los Angeles*. None of the asserted distinctions has merit.

Plaintiffs first note the proponents' declaration in the voters' pamphlet that the purpose of [article XIII B, section 6](#), was to prevent the state from "forcing" unfunded programs on local agencies. Plaintiffs invoke this pamphlet language for the proposition that any new cost "forced" on local governments by state law is subject to subvention.

The claim is directly contrary to our holding in *County of Los Angeles*. As we explained, "[i]n ... context, the [pamphlet] phrase 'to force programs on local governments' confirms that the intent underlying [section 6 \[of article XIII B\]](#) was to require reimbursement to local agencies for the costs involved in carrying out *functions peculiar to government*, not for expenses incurred by local agencies as an *incidental impact* of laws that apply generally to all state residents and entities. ... [¶] The language of [section 6](#) is far too vague to support an inference that ... each time the Legislature *68 passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. ..." ([43 Cal.3d at pp. 56-57](#), italics added.) [FN12]

FN12 Indeed, our reasoning here was expressly foreshadowed in *County of Los Angeles*. There we observed: "The Court of Appeal reached a different conclusion in [*Sacramento I*], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as ... whether the expense was a 'state mandated cost,' rather than as whether the provision of an employee benefit was a 'program or service' within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved." ([43 Cal.3d at p. 58, fn. 10.](#))

Plaintiffs next urge the Court of Appeal's premise - that chapter 2/78 did impose a "unique" requirement on local agencies within the meaning of *County of*

Los Angeles, since it applied only to them, and compelled costs to which they were not previously subject. Plaintiffs cite our recent decision in [Lucia Mar Unified School Dist. v. Honig \(1988\) 44 Cal.3d 830 \[244 Cal.Rptr. 677, 750 P.2d 318\]](#). There we held, inter alia, that by requiring each local school district to contribute part of the expense of educating its handicapped students in state-run schools - a cost previously absorbed entirely by the state - the Legislature created a "new program" subject to subvention under [article XIII B, section 6](#). As we observed, "although the schools for the handicapped have been operated by the state for many years, the program was *new insofar as [the local districts] are concerned*" (P. 835, italics added.)

Lucia Mar is inapposite here. The education of handicapped students was clearly a traditional governmental "service to the public," and it qualified as a "program" on that basis. This function had long been performed by the state, and the only issue was whether the belated shifting of the program's costs to local governments made it "new" for subvention purposes. A negative answer to that question would have undermined a central purpose of [article XIII B, section 6](#) - to prevent the state's transfer of the *cost of government* from *itself* to the local level.

Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are imposed on local governments "unique[ly]," and not merely as an incident of compliance with general laws. State and local governments, and non-profit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement "new" to local agencies, but that requirement was not "unique." *69

The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by imposing new obligations on the public and private sectors *at the same time*. However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local governments, it would have to pay. This was not the intent of our recent decision.

Next, plaintiffs complain that the new costs imposed on local governments by chapter 2/78 are too great to

be deemed "incidental" within the meaning of *County of Los Angeles*. However, our decision did not use the word "incidental" to mean merely "insignificant in amount." Rather, we declared that the state need not reimburse local governments for expenses *incidentally imposed* upon them by laws of general application. In *County of Los Angeles*, we assumed that the expenses imposed *in common* on the private and public sectors by such a general law - as by the across-the-board increase in workers' compensation benefits there at issue - might be substantial. Notwithstanding this possibility, we found the voters did not intend to require a state subsidy of the public sector in such cases. (43 Cal.3d at pp. 56-58.)

Finally, plaintiffs and their amici curiae urge us to overrule *County of Los Angeles*. They insist that our "program" and "unique requirement" limitations conflict with the language and purpose of [article XIII B](#). First, they note that *nonreimbursable* state-mandated costs are expressly listed in subdivisions (a) through (c) of [article XIII B, section 6](#). [FN13] Under the maxim *inclusio unius est exclusio alterius*, they reason, further exceptions may not be implied. Second, they assert, our limiting construction allows the state to "force" many costly but unfunded requirements on local governments, which the latter must absorb without relief from their own [article XIII B](#) spending limits. This, they aver, cannot have been the voters' intent.

FN13 [Article XIII B, section 6](#), provides that the state shall provide a subvention of funds to reimburse a local agency for costs incurred by the agency "[w]henver the [state] mandates [on the agency] a new program or higher level of service ..., except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

These arguments misapprehend both the language of [article XIII B, section 6](#), and our *County of Los Angeles* holding. Our reasoning in that case is not inconsistent with subdivisions (a) through (c) of

[section 6](#). Those paragraphs simply exclude certain state-imposed costs *even if they would otherwise be reimbursable under the "new program" or "increased service" *70 standards*. Subdivisions (a) through (c) do not purport to define what constitutes a "new program" or "increased level of service."

Moreover, the "program" and "service" standards developed in *County of Los Angeles* create no undue risk that the state will impose expensive unfunded obligations against local agencies' [article XIII B](#) spending limits. On the contrary, our standards require reimbursement whenever the state freely chooses to impose on local agencies *any* peculiarly "governmental" cost which they were not previously required to absorb.

On the other hand, as we explained in *County of Los Angeles*, extension of the subvention requirements to costs "incidentally" imposed on local governments would require the Legislature to assess the fiscal effect on local agencies of each law of general application. Moreover, it would subject much general legislation to the supermajority vote required to pass a companion local-government revenue bill. Each such necessary appropriation would, in turn, cut into the *state's* [article XIII B](#) spending limit. (§ 8, subd. (a).) We concluded that nothing in the language, history, or apparent purpose of [article XIII B](#) suggested such far-reaching limitations on legitimate state power. (43 Cal.3d at pp. 56-58.)

We remain persuaded by this reasoning. [FN14] We decline to overrule *County of Los Angeles*. Under the teaching of that case, we hold that chapter 2/78 imposes no local costs which must be reimbursed pursuant to [article XIII B, section 6](#), and parallel statutes.

FN14 Nor do we agree that subvention depends on whether the "benefit" of a state-imposed local requirement falls principally at the state or local level. Attempts to apply such a "benefit" test to the myriad of individual cases could easily produce debates bordering on the metaphysical. Nothing in the language or history of [article XIII B](#), or prior subvention statutes, suggests an intent to force such debates upon the Legislature each time it considers legislation affecting local governments.

V. "Federal" Mandate?

(11a) This case proceeded through the Court of Appeal solely on the issue whether chapter 2/78 constitutes a reimbursable "state mandate," as defined in *County of Los Angeles*. After we granted review, and in the public interest, we also decided to reexamine a related holding contained in *Sacramento I* - that chapter 2/78 does not qualify as a "federal" mandate.

Proper application of the "federal mandate" concept has important implications beyond subvention. A "cost mandated by the federal government" is exempt from a local government's statutory taxation limit. (Rev. & Tax. Code, § 2271.) Moreover, an appropriation required to comply with a *71 federal mandate is excluded from the constitutional spending limit of any affected entity, state or local (Cal. Const., art. XIII B, § 9 (b).) Accordingly, we requested supplemental briefs on this question. [FN15]

FN15 For the reasons expressed in part III, *ante*, our consideration of this issue is not foreclosed by principles of collateral estoppel.

After due consideration, we reject *Sacramento I's* premise. We conclude that chapter 2/78 does impose "costs mandated by the federal government," as described in article XIII B and parallel statutes. [FN16]

FN16 In *Sacramento I*, both the parties and the Court of Appeal assumed that if a cost was "federally mandated," it was therefore *not* a "state mandated" cost subject to subvention. In other words, it was assumed, an expense could not be both "state mandated" and "federally mandated," even if imposed by the state under federal compulsion. It was in this context that *Sacramento I* addressed the "federal mandate" issue. (See also *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at p. 543.) We here express no view on the question whether "federal" and "state" mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. We decide only that, insofar as an expense is "federally mandated," as described in the state Constitution and statutes, it is exempt from

the pertinent taxation and spending limits.

Article XIII B, section 9(b), defines federally mandated appropriations as those "required for purposes of complying with mandates of ... the federal government which, *without discretion*, require an expenditure for additional services or which *unavoidably make the providing of existing services more costly.*" (Italics added.)

As in *Sacramento I*, plaintiffs argue that the words "without discretion" and "unavoidably" require clear legal compulsion not present in Public Law 94-566. Defendants respond, as before, that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse. [FN17] In *Sacramento I*, the Court of Appeal adopted plaintiffs' narrow view. On reflection, we disagree.

FN17 Ironically, the local agencies here argue *against* a "federal mandate," with the state in opposition to that view. An anti-"federal mandate" position seems directly contrary to the local agencies' interests, since its acceptance would mean the agencies are not eligible for exemptions from their pertinent taxing and spending limits. However, all parties appear still bound by the premise of *Sacramento I* that if a cost is "federally mandated," it is ineligible for state subvention. As noted above (see fn. 16, *ante*), we do not decide that issue here.

Though section 9(b) seems plain on its face, we find a latent ambiguity in context. At the time article XIII B was adopted, United States Supreme Court decisions construing the Tenth Amendment *severely limited* federal power to dictate policy or programs to the sovereign states or their subdivisions. [FN18] Indeed, by its early ruling that federal unemployment insurance *72 laws did not violate state sovereignty insofar as they merely employed a "carrot and stick" to induce state compliance (*Steward Machine Co. v. Davis, supra*, 301 U.S. 548, 585-593 [81 L.Ed. 1279, 1290-1294]), the high court helped set the stage for two generations of pervasive federal regulation by this indirect means. [FN19]

FN18 The Tenth Amendment to the United States Constitution provides: "The powers

not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

FN19 The traditional categorical-aid provisions of the Social Security Act (e.g., [42 U.S.C. § § 301](#) et seq. [old-age assistance], [601](#) et seq. [aid to needy families with dependent children], [1201](#) et seq. [aid to the blind], [1351](#) et seq. [aid to the permanently and totally disabled]), and statutes concerned with occupational safety and health (e.g., [29 U.S.C. § 651](#) et seq.), highways and mass transit (e.g., [23 U.S.C. § 101](#) et seq.), education (e.g., [20 U.S.C. § 241a](#) et seq.), and air and water pollution (e.g., [33 U.S.C. § § 1251](#) et seq., [1311](#) et seq.; [42 U.S.C. § 7401](#) et seq.) are but a few examples of federal laws imposing greater or lesser degrees of inducement to state and local compliance with federal policies and programs.

Just three years before [article XIII B](#) was adopted, the court struck down, on Tenth Amendment grounds, Congress's effort to extend the minimum-wage and maximum-hour requirements of the Fair Labor Standards Act directly to local government employees. (*National League of Cities v. Usery* (1976) 426 U.S. 833 [49 L.Ed.2d 245, 96 S.Ct. 2465].) Overruling earlier authority (see *Maryland v. Wirtz* (1968) 392 U.S. 183 [20 L.Ed.2d 1020, 88 S.Ct. 2017]), the court held in *Usery, supra*, that constitutional principles of federalism prohibit Congress from using its otherwise "plenary" commerce power against the "States as States," so as to interfere with the essential "attributes of [state government] sovereignty." (426 U.S. at pp. 840-855 [49 L.Ed.2d at pp. 250-260].) Accordingly, said the court, Congress could not "force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. ..." (*Id.*, at p. 855 [49 L.Ed.2d at p. 259].)

Usery dealt with federal efforts to regulate sovereign units of government as employers. However, the court's rationale obviously applied with equal or greater force to direct federal regulation of state and local governments *as governments*. Under *Usery's* reasoning, it seems manifest that Congress's direct power to require or prohibit substantive

governmental policies or programs by state or local agencies was greatly curtailed. Such power would interfere impermissibly with "integral governmental functions" and essential "attributes of [state] sovereignty. [FN20] *73

FN20 *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264 [69 L.Ed.2d 1, 101 S.Ct. 2352] later implicitly confirmed this premise. There, Virginia mine operators challenged a federal surface-mining regulatory scheme on grounds it displaced state authority and sovereignty. The federal law imposed minimum federal standards, to be enforced by federal or state officials at the state's choice, and allowed states to take over regulation by imposing equal or higher standards of their own. (30 U.S.C. § § 1201 et seq., 1251-1254.) The court upheld the program, noting it regulated private persons, not the "States as States." Moreover, said the court, since states were not ordered to adopt their own surface-mining standards, "there can be no suggestion that the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program. [Citations.]" (452 U.S. at pp. 286-288 [69 L.Ed.2d at pp. 22-24].)

After [article XIII B's](#) adoption, both the result and the reasoning of *Usery* were overruled in *Garcia v. San Antonio Metro. Transit Auth.* (1985) 469 U.S. 528 [83 L.Ed.2d 1016, 105 S.Ct. 1005]. In *Garcia*, a five-justice majority concluded that the political structure of the federal system, rather than rigid categories of inviolable state "sovereignty," constitutes state and local governments' primary protection against Congress's overreaching efforts to regulate them. (Pp. 547-555 [83 L.Ed.2d at pp. 1031-1037].)

However, this later development does not alter two crucial facts extant when [article XIII B](#) was enacted. First, the power of the federal government to impose its direct regulatory will on state and local agencies was *then* sharply in doubt. Second, in conformity with this principle, the vast bulk of cost-producing federal influence on government at the state and local levels was by inducement or incentive rather than direct compulsion. [FN21] That remains so to this day.

FN21 The United States Constitution includes specific limitations on the subject-matter jurisdiction of state and local governments (art. I, § 10), imposes certain direct obligations and restrictions on the "States as States" (e.g., art. I, § 2, cls. 1, 4; art. I, § 3, cls. 1, 2; art. II, § 1, cl. 2; art. IV, § 1, 2, cls. 1, 2; Amends. XIV, XV), and grants Congress power to prevent denial of certain constitutional rights by the states (Amends. XIII, XIV, XV). Obviously, however, these provisions account for only a minute portion of the costs incurred by state and local governments as a result of federal programs and regulations.

Thus, if [article XIII B](#)'s reference to "federal mandates" were limited to strict legal compulsion by the federal government, it would have been largely superfluous. [FN22] (12) It is well settled that "constitutional ... enactments must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people. [Citations.]" ([Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization \(1978\) 22 Cal.3d 208, 245 \[149 Cal.Rptr. 239, 583 P.2d 1281\].](#)) While "[a] constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words[,] [citation] [, t]he literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. [Citations.]" (*Ibid.*)

FN22 For this reason, federal cases cited by plaintiffs and their amici curiae for the proposition that [Public Law 94-566](#) is not "coercive" (e.g., *County of Los Angeles, Cal. v. Marshall* (D.C. Cir. 1980) [631 F.2d 767](#) [203 App.D.C. 185]; *State, etc. v. Marshall* (1st. Cir. 1980) [616 F.2d 240](#)) are inapposite. Those decisions applied *Tenth Amendment* principles to determine whether [Public Law 94-566](#) was constitutionally valid. Had [Public Law 94-566](#) been struck down on this ground, it would *not* have resulted in local costs to which the "federal mandate" provisions of [article XIII B](#) might extend. Thus, applying the *Tenth Amendment* cases to determine whether a cost is "federally mandated" for purposes of [article XIII B](#) presents a problem in circular reasoning.

(11b) As the drafters and adopters of [article XIII B](#) must have understood, certain regulatory standards imposed by the federal government *74 under "cooperative federalism" schemes are coercive on the states and localities in every practical sense. The instant facts amply illustrate the point. Joint federal-state operation of a system of unemployment compensation has been a fundamental aspect of our political fabric since the Great Depression. California had afforded federally "certified" unemployment insurance protection to its workers for over 40 years by the time [Public Law 94-566, chapter 2/78, and article XIII B](#) were adopted. Every other state also operated such a system. If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments. Besides constituting an intolerable expense against the state's economy on its face, this double taxation would place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance.

Plaintiffs and their amici curiae suggest California could have chosen to terminate its own unemployment insurance system, thus leaving the state's employers faced only with the federal tax. However, we cannot imagine the drafters and adopters of [article XIII B](#) intended to force the state to such draconian ends.

Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. We therefore conclude that the state acted in response to a federal "mandate" for purposes of [article XIII B](#). [FN23] *75

FN23 The dissent cites two older cases for the premise that in antidebt and antispending measures, the exception recognized for "mandatory" costs and expenditures has traditionally been limited to obligations imposed by law. Neither cited decision is dispositive or persuasive here. [County of Los Angeles v. Byram \(1951\) 36 Cal.2d 694 \[227 P.2d 4\]](#), and the cases therein cited, concern the constitutional provision (Cal. Const., former art. XI, § 18, see now art. XVI, § 18 (hereafter section 18)) which prohibits local

governments, absent voter approval, from incurring debts or liabilities which exceed in any year the income or revenue provided for such year. Section 18 is *absolute on its face* and, unlike [article XIII B](#), it contains *no express exception* for mandatory expenses. Though sometimes founded on contorted linguistic analyses (see, e.g., [City of Long Beach v. Lisenby \(1919\) 180 Cal. 52, 56 \[179 P. 198\]](#)), the *implied* exceptions to section 18, as recognized in *Byram* and other cases, arise from a rule of necessity and despite the absolute constitutional language. Such implied exceptions must, of course, be narrowly confined.

On the other hand, [County of Los Angeles v. Payne \(1937\) 8 Cal.2d 563 \[66 P.2d 658\]](#), also cited by the dissent, construed former Political Code section 3714, which limited a local government's annual expenditures to its previously adopted budget. Section 3714 *did* contain an express exception for "mandatory expenses *required by law*." (Italics added.) *Payne's* adherence to the explicit terms of the statutory exception is hardly remarkable.

In contrast with the measure considered in *Byram*, [article XIII B](#) and the Revenue and Taxation Code *do* expressly exempt "federally mandated " expenses from the pertinent taxation and appropriations limits. Unlike the measure construed in *Payne*, neither [article XIII B](#) nor the Revenue and Taxation Code expressly limit their exemptions to obligations " required by law." [Article XIII B](#) uses the broader terms "unavoidably " and "without discretion," suggesting recognition by the drafters and voters that forces beyond strict legal compulsion may produce expenses that are realistically involuntary. The Revenue and Taxation Code explicitly includes coercive federal "carrot and stick" requirements within the federally "mandated" costs exempt from statutory property tax limits. ([Rev. & Tax. Code, § 2206.](#))

Unlike the *Sacramento I* court, we deem significant the Legislature's persistent agreement with our construction. In 1980, after the adoption of [article XIII B](#), it amended the statutory definition of "costs mandated by the federal government" to provide that these include "costs resulting from enactment of a state law or regulation where failure to enact such

law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties or loss of funds to public or private persons* in the state. ..." ([Rev. & Tax. Code, § 2206](#), italics added; Stats. 1980, ch. 1256, § 3, p. 4247.)

In *Sacramento I*, the Court of Appeal declined to apply this statutory amendment "retroactively" to [article XIII B](#). ([156 Cal.App.3d at pp. 197- 198.](#)) The Legislature immediately responded. In 1984 statutes enacted for the express purpose of "implement[ing]" [article XIII B](#) (see [Gov. Code, § 17500](#)), the Legislature reiterated its 1980 definition. (*Id.*, § 17513; Stats. 1984, ch. 1459, § 1, p. 5114.) [FN24]

FN24 Plaintiffs suggest that by reenacting this language in the wake of *Sacramento I*, the Legislature "acquiesced" in the Court of Appeal's narrow definition of "costs mandated by the federal government." We are not persuaded. *Sacramento I* did not *construe* the statutory language; it simply found a postdated statute *irrelevant* to the proper interpretation of [article XIII B](#). By later readopting its expanded definition in statutes designed to "implement" [article XIII B](#), the Legislature expressed its disagreement with *Sacramento I*, not its acquiescence. Contrary to the implications of *Sacramento I*, legislative efforts to resolve ambiguities in constitutional language are entitled to serious judicial consideration. (See authorities cited *ante*.)

Plaintiffs contend that these statutory pronouncements deserve little interpretive weight since, among other things, they are "internally inconsistent." Plaintiffs stress the proviso in [Revenue and Taxation Code, section 2206](#), and in [Government Code, section 17513](#), that the phrase "' [c]osts mandated by the federal government' does *not* include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the *option* of the state, local agency, or school district." (Italics added.)

We see no fatal inconsistencies. The first clause of the proviso merely confirms, as [article XIII B](#) itself specifies, that program funds voluntarily provided by another unit of government may not be excluded from the *76 spending limits of recipient local

agencies. (Compare [art. XIII B, § § 8](#), subd. (b), 9(b).) The second clause isolates a concern which we share - that state or local governments might otherwise claim "federally mandated costs " even where participation in a federal program, or compliance with federal " standards," is a matter of true choice. (Cf., e.g., [Carmel Valley Fire Protection Dist., supra](#), 190 Cal.App.3d at pp. 542-544.) [FN25]

FN25 In the *Carmel Valley* case, the state claimed, among other things, that local costs of purchasing protective clothing and equipment for firefighters, as required by regulations under the California Occupational Safety and Health Act, constituted a nonreimbursable "federal mandate " because the California standards merely "implemented" federal law. However, the evidence was contrary; a letter from the federal Occupational Safety and Health Administration disclaimed federal jurisdiction over California's political subdivisions and stated that state and federal standards were independent. ([190 Cal.App.3d at pp. 543-544](#).) Examination of the pertinent statutory scheme reinforces the view that compliance with federal standards in this area is "optional" with the state. Other than loss of limited federal administrative funds ([29 U.S.C. § 672\(g\)](#)), the only sanction for California's decision not to maintain a federally approved occupational safety and health system is that federal standards, administered by federal personnel, will then prevail within the state. (*Id.*, § 667(b)-(h).)

Given the variety of cooperative federal-state-local programs, we here attempt no final test for "mandatory" versus "optional" compliance with federal law. ([13](#)) A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of [article XIII B, section 9\(b\)](#): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

([11c](#)) For reasons expressed above, we are satisfied under these standards that chapter 2/78 did implement a federal "mandate" within the meaning of [article XIII B](#) and prior statutes restricting local taxation. Hence, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by chapter 2/78 may tax and spend as necessary to meet the expenses required to comply with that legislation. To the extent *Sacramento I* is inconsistent with our analysis, that decision is disapproved.

VI. Conclusion.

We have concluded that chapter 2/78 is a "federal mandate" which exempts affected state and local agencies from pertinent limits on their power to tax, appropriate, and spend. However, local governments' expenses *77 of complying with chapter 2/78 are not subject to compulsory state subvention, because chapter 2/78 imposed no new or increased "program or service," and no "unique" requirement, on local agencies. The contrary judgment of the Court of Appeal is reversed.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., and Kennard, J., concurred.

KAUFMAN, J.,

Concurring and Dissenting.

I concur in the judgment. Given this court's decision in [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202], I am compelled to agree that the obligation imposed on local governments by the 1978 state unemployment insurance legislation is not a "new program or higher level of service" within the meaning of [article XIII B, section 6, of the California Constitution](#), and that for this reason the state is not constitutionally obligated to provide a subvention of funds to reimburse the unemployment insurance costs of local governments. I respectfully dissent, however, from the additional conclusion, stated in part V of the majority opinion, that these unemployment insurance costs are "mandates of ... the federal government" and therefore exempt from the state and local government appropriation limits of [article XIII B](#) and from property taxation limits imposed by statute. In reaching this additional conclusion the majority decides an issue not raised by the parties and

completely outside the scope of this action. As so often happens when a court reaches beyond the confines of the case before it to render a gratuitous advisory opinion, the majority decides the issue incorrectly.

All too frequently in recent years (see, e.g., [S. G. Borello & Sons, Inc. v. Department of Industrial Relations](#) (1989) 48 Cal.3d 341, 345, fn. 1 [256 Cal.Rptr. 543, 769 P.2d 399]) this court, in its misguided zeal to provide enlightenment, has reached out to decide an issue not tendered by the parties. The majority's failure to exercise proper judicial restraint in the instant case is another example of this trend and one I find particularly disturbing since it violates a fundamental and venerable tenet of judicial practice - i.e., "A court will not decide a constitutional question unless such construction is absolutely necessary." (*Estate of Johnson* (1903) 139 Cal. 532, 534 [73 P. 424]; accord, *People v. Williams* (1976) 16 Cal.3d 663, 667 [128 Cal.Rptr. 888, 547 P.2d 1000]; *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65 [195 P.2d 11].) The federal mandate issue which the majority here decides, because it turns on the proper construction of [article XIII B, section 9, of our state Constitution](#), is a constitutional issue. Using this case to resolve that issue is, to my mind, indefensible.

To see just how far the majority has wandered from the issues essential to the proper resolution of this case, one need only point out that this action *78 was not brought to settle a dispute about taxation or appropriation limits, nor has this court been informed that any such dispute exists. Rather, this action was brought to enforce the holding in [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*), that the state is constitutionally obligated to reimburse the unemployment insurance costs of local governments. The governmental entities litigating this proceeding have not sought a judicial determination of the 1978 unemployment insurance legislation's effect on their statutory or constitutional taxing or spending limits, nor have they raised any issue regarding whether unemployment insurance costs are federally mandated for any purpose. The federal mandate issue was first injected into the case by this court when we requested additional briefing on the questions whether the unemployment insurance costs of local governments are federally mandated under [article XIII B, section 9, of the state Constitution](#) and, if so, whether this conclusion necessarily exempts the state from any obligation it might otherwise have to reimburse local governments for these costs.

The majority's federal mandate discussion does not even provide an alternative ground for the holding denying reimbursement of local governments' unemployment insurance costs, for the majority purports to decide whether unemployment insurance costs are federally mandated without deciding whether resolution of this issue has any bearing on entitlement to reimbursement (see maj. opn., [ante](#), p. 71, fn. 16). The majority's only justification for deciding whether unemployment insurance costs are federally mandated is that the issue has "important implications" inasmuch as federally mandated costs are "exempt from a local government's statutory taxation limit ([Rev. & Tax. Code, § 2271](#))" and "from the constitutional spending limit of any affected entity, state or local ([Cal. Const., art. XIII B, § 9\(b\)](#))." (Maj. opn., [ante](#), pp. 70-71.) But the present case is an inappropriate vehicle for deciding these weighty issues since neither the state nor the local entities have any reason to contest the other's exemptions from spending or taxation limits. In other words, the parties now before us are not adverse on these issues and so have not defined and argued opposing points of view with the vigor and thoroughness essential to proper judicial resolution of complex legal questions, particularly those of constitutional magnitude. Those who might have argued in favor of including unemployment insurance costs in the taxing and spending limits - for example, the proponents of the initiative measure by which [article XIII B](#) was enacted - are not represented in this proceeding.

Were the issue properly presented in this case, I would conclude that the unemployment insurance costs are not federally mandated. The text of a constitution "should be construed in accordance with the natural and ordinary meaning of its words." (**79Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281].) The language at issue here excludes from the definition of "appropriations subject to limitation" those appropriations "required for purposes of complying with *mandates* of the courts or the federal government which, *without discretion, require* an expenditure for additional services or which *unavoidably* make the providing of existing services more costly." ([Cal. Const., art. XIII B, § 9](#), subd. (b), italics added.)

The meaning of this language is clear; to look beyond the text for some other meaning is both unnecessary and improper under accepted rules of

constitutional interpretation. (See [State Board of Education v. Levit](#) (1959) 52 Cal.2d 441, 462 [343 P.2d 8]; [People v. Knowles](#) (1950) 35 Cal.2d 175, 182-183 [217 P.2d 1].) A "mandate" is "an order, command [or] charge." ([Xth Olympiad Com. v. American Olym. Assn.](#) (1935) 2 Cal.2d 600, 604 [42 P.2d 1023]; see also, [Morris v. County of Marin](#) (1977) 18 Cal.3d 901, 908 [136 Cal.Rptr. 251, 559 P.2d 606] ["mandatory duty" is "an obligatory duty which a governmental entity is required to perform"]; [Bridgman v. American Book Co.](#) (1958) 12 Misc.2d 63, 66 [173 N.Y.S.2d 502, 506] ["mandate" is "a command, order or direction ... which a person is bound to obey"].) The mandates to which the constitutional provision at issue refers are those "of the courts or the federal government." The coercive force of court mandates is, of course, the force of law. That "mandates of ... the federal government" are similarly limited to those obligations imposed by force of federal law is shown not only by the term "mandate" itself but also by the terms "without discretion" and "unavoidably," which plainly exclude any form of inducement using political or economic pressure rather than legal compulsion.

Laws limiting governmental appropriations and indebtedness have traditionally exempted two categories of expenditures: those required to meet emergencies and those required to satisfy duties or mandates imposed by law. (See, e.g., [County of Los Angeles v. Byram](#) (1951) 36 Cal.2d 694, 698-700 [227 P.2d 4]; [County of Los Angeles v. Payne](#) (1937) 8 Cal.2d 563, 569-575 [66 P.2d 658]; [State v. City Council of City of Helena](#) (1939) 108 Mont. 347 [90 P.2d 514, 516]; [Raynor v. King County](#) (1940) 2 Wn.2d 199 [97 P.2d 696, 707].) The latter category has been interpreted as including only those obligations compelled by force of law, as opposed to economic or political necessity or expedience. (See [County of Los Angeles v. Byram](#), *supra*, at pp. 698-700; [County of Los Angeles v. Payne](#), *supra*, at pp. 573-574.) Article XIII B of the California Constitution follows the pattern of other similar laws; it provides exemptions for emergency appropriations in section 3, subdivision (c), and for legal duties or "mandates" in [section 9](#), subdivision (b). I see no basis for concluding that the term "mandate," which in the context of government debt and appropriation limitations has traditionally *80 meant a duty imposed by force of law, has suddenly acquired a novel and more expansive meaning in [section 9](#). On the contrary, the drafters of [section 9](#) appear to have taken pains to avoid any such interpretation.

As stated in *Sacramento I*, "The concept of federal

mandates ... is defined in [section 9 of article XIII B](#). Subdivision (b) of that section excludes from a governmental entity's appropriation limit "[a]ppropriations required for purposes of complying with mandates of ... the federal government which, *without discretion, require an expenditure*' by the governmental entity. (Italics added.) As contemplated by [article XIII B, section 9](#), a federal mandate is one pursuant to which the federal government imposes a cost upon a governmental entity, and the entity has *no discretion* to refuse the cost. Chapter 2 [the 1978 unemployment insurance legislation] was not a federal mandate within this constitutional definition, as the State had the discretion to participate or not in the federal unemployment insurance system." ([Sacramento I](#), *supra*, 156 Cal.App.3d 182, 197, italics in original.) Giving the constitutional language its usual and ordinary meaning, I agree with the Court of Appeal that federal law "mandates" an expenditure only if the expenditure is legally compelled, and not if the federal law merely provides economic or political inducements, no matter how powerful or coercive. Since it is undisputed that the state was under no legal compulsion to enact the 1978 unemployment insurance legislation, the burdens of that legislation are not "mandates of ... the federal government."

In support of its contrary conclusion, the majority reasons as follows: (1) when article XIII B of the California Constitution was drafted and enacted, the Tenth Amendment to the United States Constitution had been construed to prohibit Congress from imposing costs on state and local governments; (2) as a result, virtually all federal laws imposing costs on state and local governments did so through "carrot and stick" incentive programs rather than by direct legal compulsion; and (3) the exemption for "mandates of ... the federal government" must be construed to encompass at least some of these incentive programs because otherwise it would be almost entirely superfluous. I find each of these points highly questionable, if not demonstratively unsound.

First, the Tenth Amendment has never been interpreted as entirely prohibiting the federal government from imposing costs on state and local government. Rather, [National League of Cities v. Usery](#) (1976) 426 U.S. 833 [49 L.Ed.2d 245, 96 S.Ct. 2465] defined an exception to the broad sweep of Congress's commerce clause authority. Under this exception, "traditional governmental functions" of state and local governments were protected from direct and intrusive federal regulation. (426 U.S. at p.

[852 \[49 L.Ed.2d at pp. 257- 258\].](#)) As explained in ***81**[Garcia v. San Antonio Metro. Transit Auth. \(1985\) 469 U.S. 528, 538-547 \[83 L.Ed.2d 1016, 1025-1032, 105 S.Ct. 1005\]](#), the result was an inconsistent patchwork of decisions upholding or striking laws depending on whether the regulated activities were perceived by the court as being traditionally associated with state or local government or constituting " attributes of state sovereignty." Thus, a significant number of laws imposing costs on state and local governments survived Tenth Amendment scrutiny even before the decision in *Garcia v. San Antonio Metro. Transit Auth.*, *supra*. (See, e.g., [EEOC v. Wyoming \(1983\) 460 U.S. 226 \[75 L.Ed.2d 18, 103 S.Ct. 1054\]](#) [holding state and local government employee retirement policies subject to federal age discrimination regulations]; see generally, Skover, "*Phoenix Rising*" and *Federalism Analysis* (1986) 13 *Hastings Const.L.Q.* 271, 286-288.) More importantly, however, I see no reason to assume that the drafters of article XIII B intended that the federal mandate exemption would have broad application, encompassing a large number of federal programs. Rather, construing the exemption narrowly seems entirely consistent with the probable intent of those who drafted the provision.

The test proposed by the majority for identifying those incentive programs which qualify as "mandates of ... the federal government" will require an extensive factual inquiry into the practical consequences of noncompliance with the federal law. It will be burdensome to apply and its outcome will be difficult to predict. Besides being wholly unnecessary to resolution of this case, and violating the probable intent of the voters who enacted article XIII B of the California Constitution, [FN1] the majority's discussion of the federal mandate issue is certain to generate more difficulties than it resolves. ***82**

FN1 Those voters no doubt will be upset to learn that their tax dollars will be dissipated in litigation to determine such metaphysical questions as whether a decision to participate in a federal program was "truly voluntary."

Cal.,1990.

City of Sacramento v. State

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LONG BEACH UNIFIED SCHOOL DISTRICT,
 Plaintiff and Appellant,

v.

THE STATE OF CALIFORNIA et al., Defendants
 and Appellants; MARK H. BLOODGOOD,
 as Auditor-Controller, etc., et al., Defendants and
 Respondents.

No. B033742.

Court of Appeal, Second District, Division 5,
 California.

Nov. 15, 1990.

SUMMARY

A school district filed a claim with the state Board of Control asserting that its expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through an executive order (in the form of regulations issued by the state Department of Education) and were reimbursable pursuant to former Rev. & Tax. Code, § 2234, and [Cal. Const., art. XIII B, § 6](#). The board approved the claim, but the Legislature deleted the requested funding from an appropriations bill and enacted a "finding" that the executive order did not impose a state-mandated local program. The district then filed a petition to compel reimbursement pursuant to [Code Civ. Proc., § 1085](#), and a complaint for declaratory relief. The trial court ruled that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the board's decisions. The court's judgment in favor of the district identified certain funds previously appropriated by the Legislature as "reasonably available" for reimbursement of the claimed expenditures. (Superior Court of Los Angeles County, No. C606020, Robert I. Weil, Judge.)

The Court of Appeal modified the trial court's decision by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts," and by including charging orders against certain funds appropriated through subsequent budget acts. The court affirmed the judgment as so modified and remanded to the trial

court to determine whether at the time of its order, there were, in the funds from which reimbursement could properly be paid, unexpended, unencumbered funds sufficient to satisfy the judgment. The court held that since the doctrines of collateral estoppel and waiver were inapplicable to the facts of the case, the trial court should have allowed the state to challenge the board's decisions. However, the court also held that the executive order required *156 local school boards to provide a higher level of service than is required constitutionally or by case law and that the order was a reimbursable state mandate pursuant to [Cal. Const., art. XIII B, § 6](#). The court further held that former Rev. & Tax. Code, § 2234, did not provide reimbursement of the subject claim. (Opinion by Lucas, P. J., with Ashby and Boren, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Judgments § 88--Collateral Estoppel--Finality of Judgment--Administrative Order--Where Appeal Still Possible.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of administrative collateral estoppel was inapplicable and did not prevent the state from litigating whether the state Board of Control properly considered the subject claim and whether the claim was reimbursable. The board had approved the claim but the Legislature had deleted the requested funding from an appropriations bill. The board's decisions were administratively final, for collateral estoppel purposes, since no party requested reconsideration within the applicable 10-day period, and no statute or regulation provided for further consideration of the matter by the board. However, a decision will not be given collateral estoppel effect if an appeal has been taken or if the time for such appeal has not lapsed. The applicable statute of limitations for review of the board's decisions was three years, and the school district's action was filed before this period lapsed.

(2) Judgments § 88--Collateral Estoppel--Finality of Judgment.

Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. The traditional elements of collateral estoppel include the requirement that the prior judgment be "final."

(3a, 3b) Administrative Law § 81--Judicial Review and Relief--Finality of Administrative Action--For Collateral Estoppel Purposes.

Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: the decision must be final with respect to action by the administrative agency, and the decision must have *157 conclusive effect. A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses no further power to reconsider or rehear the claim. To have conclusive effect, the decision must be free from direct attack.

(4) Limitation of Actions § 30--Commencement of Period.

A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon.

(5a, 5b, 5c) Estoppel and Waiver § 23--Waiver--State's Right to Contest Board of Control's Findings as to State-mandated Costs.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of waiver did not preclude the state from contesting the state Board of Control's previous findings that the subject claim was reimbursable (the Legislature subsequently deleted the requested funding from an appropriations bill). The statute of limitations applicable to an appeal by the state from the board's decisions had not run at the time the state raised its affirmative defenses in the district's action, and this assertion of defenses was inconsistent with an intent on the state's part to waive its right to contest the board's decisions.

(6) Estoppel and Waiver § 19--Waiver--Requisites.

A waiver occurs when there is an existing right, actual or constructive knowledge of its existence, and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. Ordinarily the issue of waiver is a question of fact that is binding on the appellate court if the determination is supported by substantial evidence. However, the question is one of law when the evidence is not in conflict and is susceptible of only

one reasonable inference.

(7) Estoppel and Waiver § 6--Equitable Estoppel--Challenge to State Board of Control's Findings as to State-mandated Costs--Absence of Confidential Relationship.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the state was not equitably estopped from challenging the state Board of Control's decisions finding that the subject claim was reimbursable as a state-mandated cost (the Legislature subsequently deleted the requested funding from an appropriations bill). In the absence of a confidential relationship, the doctrine of equitable estoppel is *158 inapplicable where there is a mistake of law. There was no confidential relationship, and since the statute of limitations did not bar the state from litigating the mandate and reimbursability issues, the doctrine was inapplicable.

(8) Appellate Review § 145--Function of Appellate Court--Questions of Law.

On appeal by the state in an action by a school district to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the appellate court's conclusion that the trial court erred in failing to consider the merits of the state's challenge to the state Board of Control's decisions that the subject claims were reimbursable as state-mandated costs did not require that the matter be remanded to the trial court for a full hearing, since the question of whether a cost is state-mandated is one of law.

(9a, 9b, 9c) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures.

A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order (in the form of regulations issued by the state Department of Education) required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. Although under Cal. Const., art. XIII B, § 6, subd. (c), the state has discretion whether to reimburse pre-1975 mandates that are either statutes or executive orders implementing statutes, it cannot be inferred from this

exception that reimbursability is otherwise dependent on the form of the mandate. Further, the district's claim was not defeated by [Gov. Code, § § 17561 and 17514](#), limiting reimbursement to certain costs incurred after July 1, 1980, the effective date of Cal. Const., art. XIII B, since the limitations contained in those sections are confined to the exception contained in [Cal. Const., art. XIII B, § 6](#), subd. (c).

(10) State of California § 11--Fiscal Matters--Reimbursement to Local Governments for State-mandated Costs.

The subvention requirement of [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated costs or increased levels of service), is directed to state-mandated increases in the services provided by local agencies in existing "programs." The drafters and electorate had in mind *159 the commonly understood meaning of the term-programs that carry out the governmental function of providing services to the public, or laws that, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

[See [Cal.Jur.3d, State of California, § 78](#); 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(11) Constitutional Law § 13--Construction of Constitutions--Language of Enactments.

In construing a constitutional provision enacted by the voters, a court must determine the intent of the voters by first looking to the language itself, which should be construed in accordance with the natural and ordinary meaning of its words.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments for State-mandate Costs--Executive Order as Mandate.

In [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of [§ 6 in art. XIII B](#) was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens

appeared.

(13) Administrative Law § 88--Judicial Review and Relief--Exhaustion of Administrative Remedies--Claim by School District for Reimbursement of State-mandated Costs.

A school district did not fail to exhaust its administrative remedies in seeking reimbursement for expenditures related to its efforts to alleviate racial and ethnic segregation, based on its claim that the expenditures were mandated by a state executive order, where the state Board of Control approved the district's reimbursement claim, even though the state Commission on State Mandates subsequently succeeded to the functions of the board and the district never made a claim to the commission. The board's decisions in favor of the district became administratively final before the commission was in place, and there was no evidence that the commission did not consider these decisions by the board to be final. *160 Although the commission was given jurisdiction over all claims that had not been included in a local government claims bill enacted before January 1, 1985, the subject claim was included in such a bill (which was signed into law only after the recommended appropriation was deleted). Under the statutory scheme, the district pursued the only relief that a disappointed claimant at such a juncture could pursue--an action in declaratory relief to declare an executive order void or unenforceable and to enjoin its enforcement. There was no requirement to seek further administrative review.

(14) Courts § 20--Subject Matter Jurisdiction--When Issue May Be Raised.

Lack of subject matter jurisdiction may be raised at any time.

(15a, 15b) Schools § 4--School Districts; Financing; Funds-- Reimbursement of State-mandated Costs--Desegregation Expenditures-- Applicability of Statute Requiring Reimbursement of Subsequently Mandated Costs.

A school district was not entitled to reimbursement on the basis of former Rev. & Tax. Code, § 2234 (reimbursement of school district for costs it is incurring that are subsequently mandated by a state), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since the executive order (in the form of regulations issued by the state Department of Education) that required the district to take specific actions to alleviate segregation fell outside the purview of § 2234. The "subsequently mandated" provision of § 2234 originally was contained in sections that set forth

specific date limitations, and the Legislature likewise intended to limit claims made pursuant to § 2234. The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs. Since the executive order fell outside the January 1, 1978, limits set by [Rev. & Tax. Code, § 2207.5](#), [Rev. & Tax. Code, § 2234](#), did not provide reimbursement to the district.

(16) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.

A statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. The legislative history of the statute may be considered in ascertaining legislative design.

(17a, 17b, 17c) Constitutional Law § 40--Distribution of Governmental Powers--Judicial Power--Appropriation of Funds--Reimbursement of State-mandated Costs.

In an action by a school district against the state to compel the state to reimburse the district for expenditures *161 related to its efforts to alleviate racial and ethnic segregation, the trial court's award of reimbursement to the district, on the ground that the district's expenditures were mandated by an executive order, from appropriated funds and specified budgets and accounts did not constitute an invasion of the province of the Legislature or a judicial usurpation of the republican form of government guaranteed by [U.S. Const., art. IV, § 4](#), except insofar as it designated the Special Fund for Economic Uncertainties as a source for reimbursement. The specified line item accounts for the Department of Education, the Commission on State Mandates, and the Reserve for Contingencies and Emergencies provided funds for a broad range of activities similar to those specified in the executive order and thus were reasonably available for reimbursement. However, remand to the trial court was necessary to determine whether these sources contained sufficient unexhausted funds to cover the award.

(18) Constitutional Law § 40--Distribution of Governmental Powers--Judicial Power--Appropriation of Funds.

A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. The test is whether such funds are reasonably available for the expenditures in question. Funds are

"reasonably available" for reimbursement of local government expenditures when the purposes for which those funds were appropriated are generally related to the nature of costs incurred. There is no requirement that the appropriation specifically refer to the particular expenditure, nor must past administrative practice sanction coverage from a particular fund.

(19) Appellate Review § 162--Modification--To Add Charge Order.

An appellate court is empowered to add a directive that a trial court order be modified to include charging orders against funds appropriated by subsequent budgets acts.

(20) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--Effect of Legislative Finding That Costs Not State-mandated.

A school district was entitled to reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, notwithstanding that after the state Board of Control approved the district's *162 reimbursement claim, the Legislature enacted a "finding" that the executive order requiring the district to undertake desegregation activities did not impose a state-mandated local program. Unsupported legislative disclaimers are insufficient to defeat reimbursement. The district had a constitutional right to reimbursement, and the Legislature could not limit that right.

(21) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--Department of Education Budget as Source.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in ordering reimbursement to take place in part from the state Department of Education budget. Logic dictated that department funding be the initial and primary source for reimbursement: given the fact that the executive order was issued by the department, the evidence overwhelmingly supported the trial court's finding of a general relationship between the department budget items and the reimbursable expenditures.

(22) Interest § 8--Rate--Reimbursement of School District's State-mandated Costs.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in awarding the district interest at the legal rate ([Cal. Const., art. XV, § 1, par. \(2\)](#)), rather than at the rate of 6 percent per annum pursuant to [Gov. Code, § 926.10](#). [Gov. Code, § 926.10](#), is part of the California Tort Claims Act ([Gov. Code, § 900](#) et seq.), which provides a statutory scheme for the filing of claims against public entities for alleged injuries. It makes no provision for claims for reimbursement for state-mandated expenditures.

(23) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--County Fines and Forfeitures Funds as Source.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state *163 mandate, did not err in determining that moneys in the Fines and Forfeiture Funds in the custody and possession of the county auditor-controller for transfer to the state treasury were not reasonably available for reimbursement purposes. There was no evidence in the record showing the use of those funds once they were transmitted to the state, nor was there any evidence indicating that those funds were then reasonably available to satisfy the district's claim. It could not be concluded as a matter of law that a general relationship existed between the funds and the nature of the costs incurred pursuant to the executive order. Further, there was no ground on which the funds could be made available to the district while in the possession of the auditor-controller.

COUNSEL

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, Joseph R. Symkowick and Joanne Lowe for Defendants and Appellants.

De Witt W. Clinton, County Counsel, and Lawrence B. Launer, Assistant County Counsel, for Defendants and Respondents.

Ball, Hunt, Hart, Brown & Baerwitz, Anthony Murray, Allan E. Tebbetts, Agnes H. Mulhearn, Ross & Scott, William D. Ross, Corin L. Kahn and Diana P. Scott for Plaintiff and Appellant.

LUCAS, P. J.

Introduction

Long Beach Unified School District (LBUSD) filed a claim with the Board of Control of the State of California (Board), asserting that certain expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through regulations (Executive Order) issued by the Department of Education (DOE) and were *164 reimbursable pursuant to former Revenue and Taxation Code section 2234 and [article XIII B, section 6](#) of the California Constitution. The Board eventually approved the claim and reported to the Legislature its recommendation that funds be appropriated to cover the statewide estimated costs of compliance with the Executive Order. When the Legislature deleted the requested funding from an appropriations bill, LBUSD filed a petition to compel reimbursement ([Code Civ. Proc., § 1085](#)) and complaint for declaratory relief. The trial court held that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the decisions of the Board, and it gave judgment to LBUSD. It also ruled that certain funds previously appropriated by the Legislature were "reasonably available" for reimbursement of the claimed expenditures, subject to audit by the state Controller.

We conclude that the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case. However, we determine as a question of law that the Executive Order requires local school boards to provide a higher level of service than is required either constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to [article XIII B, section 6 of the California Constitution](#). We also decide that former Revenue and Taxation Code section 2234 does not provide for reimbursement of the claim.

Based on uncontradicted evidence, we modify the decision of the trial court regarding which budget line

item account numbers provide "reasonably available" funds to reimburse LBUSD for appropriate expenditures under the claim. We further modify the decision to include charging orders against funds appropriated by subsequent budget acts. Finally, we remand the matter to the trial court to determine whether at the time of its order unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court must resolve this same issue with respect to the charging order.

Background and Procedural History

The California Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 1, p. 2931) limited the power of local governmental entities to levy property taxes. It also mandated that when the state requires such entities to provide a new program or higher level of service, the state must reimburse those costs. Over time, amendments to the California Constitution and numerous legislative changes impacted both the right and procedure for obtaining reimbursement.
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Sometime prior to September 8, 1977, LBUSD, at its option, voluntarily began to incur substantial costs to alleviate the racial and ethnic segregation of students within its jurisdiction.

On or about the above date, DOE adopted certain regulations which added [sections 90](#) through [101 to title 5 of the California Administrative Code](#), effective September 16, 1977. We refer to these regulations as the Executive Order.

The Executive Order and related guidelines for implementation required in part that school districts which identified one or more schools as either having or being in danger of having segregation of its minority students "shall, no later than January 1, 1979, and each four years thereafter, develop and adopt a reasonably feasible plan for the alleviation and prevention of racial and ethnic segregation of minority students in the district."

On or about June 4, 1982, LBUSD submitted a "test claim" (Claim) [FN1] to the Board for reimbursement of \$9,050,714-the total costs which LBUSD claimed it had incurred during fiscal years 1977-1978 through 1981-1982 for activities required by the Executive Order and guidelines. LBUSD cited former Revenue and Taxation Code section 2234 as authority for the requested reimbursement, asserting that the costs had been "subsequently mandated" by the state. [FN2]

FN1 Former Revenue and Taxation Code section 2218 defines "test claim" as "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Stats. 1980, ch. 1256, § 7, p. 4249.)

FN2 All statutory references are to the Revenue and Taxation Code unless otherwise stated.

Former section 2234 provided: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for such costs incurred after the operative date of such mandate." (Stats. 1980, ch. 1256, § 11, pp. 4251-4252.)

The Board denied the Claim on the grounds that it had no jurisdiction to accept a claim filed under [section 2234](#). LBUSD petitioned superior court for review of the Board decision. ([Code Civ. Proc., § 1094.5](#).) That court concluded the Board had jurisdiction to accept a [section 2234](#) claim and ordered it to hear the matter on its merits. The Board did not appeal this decision.

On February 16, 1984, the Board conducted a hearing to consider the Claim. LBUSD presented written and oral argument that the Claim was reimbursable pursuant to [section 2234](#) and, in addition, under [article XIII B, section 6 of the California Constitution](#). DOE and the State Department ***166** of Finance (Finance) participated in the hearing. [FN3] The Board concluded that the Executive Order constituted a state mandate. On April 26, 1984, the Board adopted parameters and guidelines proposed by LBUSD for reimbursement of the expenditures. No state entity either sought reconsideration of the Board decisions, available pursuant to former section 633.6 of the California Administrative Code, [FN4] or petitioned for judicial review. [FN5]

FN3 The DOE recommended that the Claim be denied on the grounds that the requirements of the Executive Order were constitutionally mandated and court ordered

and because the Executive Order was effective prior to January 1, 1978 (issues discussed *post*). However, counsel for the DOE expressed dismay that school districts which had voluntarily instituted desegregation programs had been having problems receiving funding from the Legislature, while schools which had been forced to do so had been receiving "substantial amounts of money."

A spokesman from Finance recalled there had been some doubt whether the Board had jurisdiction to hear a 2234 claim. He stated that, assuming the Board did have jurisdiction, the Executive Order contained at least one state mandate, which possibly consisted of administrative kinds of tasks related to the identification of "problem areas and the like."

FN4 Former section 633.6 of the California Administrative Code (now renamed California Code of Regulations) provided in relevant part: "(b) Request for Reconsideration. [¶] (1) A request for reconsideration of a Board determination on a specific test claim ... shall be filed, in writing, with the Board of Control, no later than ten (10) days after any determination regarding the claim by the Board" ([Title 2, Cal. Admin. Code](#))

FN5 Former section 2253.5 provided: "A claimant or the state may commence a proceeding in accordance with the provisions of [Section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the Board of Control on the grounds that the board's decision is not supported by substantial evidence. The court may order the board to hold another hearing regarding such claim and may direct the board on what basis the claim is to receive a rehearing." (Stats. 1978, ch. 794, § 8, p. 2551.)

In December 1984, pursuant to former section 2255, the Board reported to the Legislature the number of mandates it had found and the estimated statewide costs of each mandate. With respect to the Executive Order mandate, the Board adopted an estimate by Finance that reimbursement of school districts, including LBUSD, for costs expended in compliance

with the Executive Order would total \$95 million for fiscal years 1977-1978 through 1984-1985. The Board recommended that the Legislature appropriate that amount.

Effective January 1, 1985, the Commission on State Mandates (Commission) succeeded to the functions of the Board. ([Gov. Code, § § 17525, 17630.](#))

On March 4, 1985, Assembly Bill No. 1301 was introduced. It included an appropriation of \$95 million to the state controller "for payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to [the Executive Order]" On June 27, the Assembly amended the bill by deleting this \$95 million appropriation and adding a *167 "finding" that the Executive Order did not impose a state-mandated local program. [FN6] On September 28, 1985, the Governor approved the bill as amended.

FN6 Former Section 2255 provided in part: "(b) If the Legislature deletes from a local government claims bill funding for a mandate imposed either by legislation or by a regulation ..., it may take one of the following courses of action: (1) Include a finding that the legislation or regulation does not contain a mandate" (Stats. 1982, ch. 1638, § 7, p. 6662.)

On June 26, 1986, LBUSD petitioned for writ of mandate ([Code Civ. Proc., § 1085](#)) and filed a complaint for declaratory relief against defendants State of California; Commission; Finance; DOE; holders of the offices of State Controller and State Treasurer and holder of the office of Auditor-Controller of the County of Los Angeles, and their successors in interest. LBUSD requested issuance of a writ of mandate commanding the respondents to comply with [section 2234](#) (fn. 2, *ante*) [FN7] and, in an amended petition, its successor, [Government Code section 17565](#), and with [California Constitution, article XIII B, section 6](#). [FN8] It further requested respondents to reimburse LBUSD \$24,164,593 for fiscal years 1977-1978 through 1982-1983, \$3,850,276 for fiscal years 1983-1984 and 1984-1985, and accrued interest, for activities mandated by the Executive Order.

FN7 The language of [Government Code section 17565](#) is nearly identical to that of

[section 2234](#) (fn. 2, *ante*), and provides: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." (Stats. 1986, ch. 879, § 10, p. 3043.)

FN8 [Article XIII B, section 6](#) provides in pertinent part: "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 program or increased level of service"

The trial court let stand the conclusion of the Board that the Executive Order constituted a reimbursable state mandate and ruled in favor of LBUSD. No party requested a statement of decision.

The judgment stated that the Executive Order constituted a reimbursable state mandate which state entities could not challenge because of the doctrines of administrative collateral estoppel and waiver. It provided that certain previously appropriated funds were "reasonably available" to reimburse LBUSD for its claimed expenditures, applicable interest, and court costs. The judgment also stated that funds denominated the "Fines and Forfeitures Funds," under the custody of the Auditor-Controller of the County of Los Angeles, were not reasonably available. The judgment further decreed that the State Controller retained the right to audit the claims and records of LBUSD to verify the amount of the reimbursement award sum. *168

State respondents (State) and DOE separately filed timely notices of appeal, and LBUSD cross-appealed. [FN9]

FN9 Although an "Amended Notice to Prepare Clerk's Transcript" filed by DOE on April 11, 1988, requests the clerk of the superior court to incorporate in the record its notice of appeal filed April 1, 1988, this latter document does not appear in the record before us, and the original apparently is lost within the court system. Respondent LBUSD received a copy of the notice on

April 4, 1988.

Discussion

State asserts that neither the doctrine of collateral estoppel nor the doctrine of waiver is applicable to this case, the costs incurred by LBUSD are not reimbursable, and the remedy authorized by the trial court is inconsistent with California law and invades the province of the Legislature, a violation of [article IV, section 4 of the United States Constitution](#).

The thrust of the DOE appeal is that its budget is not an appropriate source of funding for the reimbursement.

LBUSD has argued in its cross-appeal that an additional source of funding, the "Fines and Forfeiture Funds," should be made available for reimbursement of its costs and, in supplementary briefing, requests this court to order a modification of the judgment to include as "reasonably available funding" specific line item accounts from the 1988-1989 and 1989-1990 state budgets.

I. State Not Barred From Challenging Decisions of the Board

A. Administrative Collateral Estoppel

(1a) State first contends that the doctrine of administrative collateral estoppel is not applicable to the facts of this case and does not prevent State from litigating whether the Board properly considered the subject claim and whether the claim is reimbursable.

(2) Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. ([Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.](#) (1962) 58 Cal.2d 601, 604 [25 Cal.Rptr. 559, 375 P.2d 439].) The traditional elements of collateral estoppel include the requirement that the prior judgment be "final." (*Ibid.*)

(3a) Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: (1) the decision must be final with *169 respect to action by the administrative agency (see [Code Civ. Proc., § 1094.5](#), subd. (a)); and (2) the decision must have conclusive effect ([Sandoval v. Superior Court](#) (1983) 140 Cal.App.3d 932, 936-937 [190 Cal.Rptr. 29]).

A decision attains the requisite administrative finality when the agency has exhausted its

jurisdiction and possesses "no further power to reconsider or rehear the claim. [Fn. omitted.]" (*Chas. L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 98 [31 Cal.Rptr. 524].) (1b) In the case at bar, former section 633.6 of the Administrative Code provided a 10-day period during which any party could request reconsideration of any Board determination (fn. 4, *ante*). The Board decided on February 16, 1984, that the Executive Order constituted a state mandate, and on April 26, 1984, it adopted parameters and guidelines for the reimbursement of the claimed expenditures. No party requested reconsideration, no statute or regulation provided for further consideration of the matter by the Board (see, e.g., *Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918]), and the decisions became administratively final on February 27, 1984, and May 7, 1984, respectively [FN10] (*Ziganto v. Taylor* (1961) 198 Cal.App.2d 603, 607 [18 Cal.Rptr. 229]).

FN10 We take judicial notice pursuant to [Evidence Code section 452](#), subdivision (h), that February 26, 1984, and May 6, 1984, fall on Sundays.

(3b) Next, the decision must have conclusive effect. (*Sandoval v. Superior Court, supra*, 140 Cal.App.3d 932, 936-937.) In other words, the decision must be free from direct attack. (*People v. Sims* (1982) 32 Cal.3d 468, 486 [186 Cal.Rptr. 77, 651 P.2d 321].) A direct attack on an administrative decision may be made by appeal to the superior court for review by petition for administrative mandamus. ([Code Civ. Proc., § 1094.5](#).) (1c) A decision will not be given collateral estoppel effect if such appeal has been taken or if the time for such appeal has not lapsed. (*Sandoval v. Superior Court, supra*, 140 Cal.App.3d at pp. 936-937; *Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 911 [226 Cal.Rptr. 558, 718 P.2d 920].) The applicable statute of limitations for such review in the case at bar is three years. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534 [234 Cal.Rptr. 795]; *Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256].) (4) A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon. (*Dillon v. Board of Pension Comm'rs.* (1941) 18 Cal.2d 427, 430 [116 P.2d 37, 136 A.L.R. 800].)

(1d) In the instant case, State's causes of action

accrued when the Board made the two decisions adverse to State on February 16 and April 26, 1984, *170 as discussed. State did not request reconsideration, and the decisions became administratively final on February 27 and May 7, 1984. [FN11] For purposes of discussion, we will assume the applicable three-year statute of limitations period for the two Board decisions commenced on February 28 and May 8, 1984, and ended on February 28 and May 8, 1987. [FN12] LBUSD filed its petition for ordinary mandamus ([Code Civ. Proc., § 1085](#)) and complaint for declaratory relief on June 26, 1986. At that point, the limitations periods had not run against State and the Board decisions lacked the necessary finality to satisfy that requirement of the doctrine of administrative collateral estoppel. [FN13]

FN11 We do not address the contention of LBUSD that State failed to exhaust its administrative remedies (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [109 P.2d 942, 132 A.L.R. 715]; *Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 982 [88 Cal.Rptr. 533]) and therefore State cannot assert its affirmative defenses in response to the petition and complaint of the school district. Traditionally, the doctrine has been raised as a bar only with respect to the party seeking judicial relief, not against the responding party (*ibid.*); we have found no case holding otherwise.

FN12 If State had sought reconsideration and its request been denied, or if its request had been granted but the matter again decided in favor of LBUSD, the Board decision would have been final 10 days after the Board action, and at that point the statute would have commenced to run against State.

FN13 State argues that its statute of limitations did not commence until the legislation was enacted without the appropriation (Sept. 28, 1985), citing *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at page 548. However, *Carmel Valley* held that the claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete, which occurred in that case when

the legislation was enacted without the subject appropriations. At that point, *Carmel Valley* reasoned, the state had breached its duty to reimburse, and the claimant's right of action in traditional mandamus accrued. (*Ibid.*) However, *Carmel Valley* decided, as do we in the case at bar, that the state's statute of limitations commenced on the date the Board made decisions adverse to its interests. (*Id.* at p. 534.)

In addition, we see no reason to permit State to rely on the fortuitous actions of the Legislature, an independent branch of government, to bail it out of obligations established in the distant past by state agents- especially given the lengthy three-year statute of limitations. (Compare, e.g., Gov. Code, § 11523 [mandatory time limit within which to petition for administrative mandamus can be 30 days after last day on which administrative reconsideration can be ordered]; Lab. Code, § 1160.8, and Jackson & Perkins Co. v. Agricultural Labor Relations Board (1978) 77 Cal.App.3d 830, 834 [144 Cal.Rptr. 166] [30 days from issuance of board order even if party has filed a motion to reconsider].)

B. Waiver

(5a) State also asserts that the doctrine of waiver is not applicable.

(6) A waiver occurs when there is "an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce *171 a reasonable belief that it has been waived. [Citations.]" (*Carmel Valley Fire Protection Dist. v. State of California*, supra, 190 Cal.App.3d at p. 534.) Ordinarily, the issue of waiver is a question of fact which is binding on the appellate court if the determination is supported by substantial evidence. (*Napa Association of Public Employees v. County of Napa* (1979) 98 Cal.App.3d 263, 268 [159 Cal.Rptr. 522].) However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference. (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 151-152 [135 Cal.Rptr. 802].)

(5b) In the instant case, the right to contest the findings of the Board is at issue, and there is no dispute that the state was aware of the existence of this right. As discussed, the statute of limitations had

not run when State raised its affirmative defenses, and during this time State could have filed a separate petition for administrative mandamus. (7)(5c) State's assertion of its affirmative defenses during this period is inconsistent with an intent to waive its right to contest the Board decisions, and therefore the doctrine of waiver is not applicable. [FN14]

FN14 LBUSD contends that State should be equitably estopped from challenging the Board decisions. In the absence of a confidential relationship, the doctrine of equitable estoppel is inapplicable where there is a mistake of law. (*Gilbert v. City of Martinez* (1957) 152 Cal.App.2d 374, 378 [313 P.2d 139]; *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784 [68 Cal.Rptr. 389].) There is no confidential relationship herein, and since we conclude as a matter of law and contrary to the trial court that the statute of limitations does not bar State from litigating the mandate and reimbursability issues, the doctrine is inapplicable.

II. Issue of State Mandate

(8) Ordinarily, our conclusion that the trial court erred in failing to consider the merits of the State's challenge to the decisions of the Board would require that the matter be remanded to the trial court for a full hearing. However, because the question of whether a cost is state mandated is one of law in the instant case (cf. *Carmel Valley Fire Protection Dist. v. State of California*, supra, 190 Cal.App.3d at p. 536), we now decide that the expenditures are reimbursable pursuant to article XIII B, section 6 of the California Constitution and that no relief is available under section 2234. [FN15] *172

FN15 We invited State, DOE, and LBUSD to submit additional briefing on the following issues: "1. Can it be determined as a question of law whether sections 90 through 101 of Title 5 of the California Administrative Code [Executive Order] constitute a state mandate within the meaning of article XIII B, section 6 of the California Constitution? 2. Do the above sections constitute such mandate?" State and LBUSD submitted additional argument; DOE declined the invitation.

A. Recovery Under [Article XIII B, Section 6](#)

(9a) On November 6, 1979, California voters passed initiative measure Proposition 4, which added article XIII B to the state Constitution. This measure, a corollary to the previously passed Proposition 13 (art. XIII A, which restricts governmental taxing authority), placed limits on the growth of state and local government appropriations. It also provided reimbursement to local governments for the costs of complying with certain requirements mandated by the state. LBUSD argues that [section 6](#) of this provision is an additional ground for reimbursement.

1. The Executive Order Requires a Higher Level of Service

In relevant part [article XIII B, section 6 \(Section 6\)](#) provides: "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 program or increased level of service" (10) The subvention requirement of [Section 6](#) "is directed to state mandated increases in the services provided by local agencies in existing 'programs.' " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) "[T]he drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*)

(9b) In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly governmental function. (Cf. *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 537.) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of [Section 6](#).

State argues that the Executive Order does not mandate a higher level of service-or a new program-because school districts in California have a constitutional duty to make an effort to eliminate racial segregation in the public schools. In support of its argument, State cites *Brown v. Board of Education* (1952) 347 U.S. 483, 495 [98 L.Ed. 873, 881, 74

S.Ct. 686, 38 A.L.R.2d 1180]; *Jackson v. Pasadena City School District* (1963) 59 Cal.2d 876, 881 [31 Cal.Rptr. 606, 382 P.2d 878]; *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28] and cases cited therein; and *173*National Assn. for Advancement of Colored People v. San Bernardino City Unified Sch. Dist.* (1976) 17 Cal.3d 311 [130 Cal.Rptr. 744, 551 P.2d 48]. These cases show that school districts do indeed have a constitutional obligation to alleviate racial segregation, and on this ground the Executive Order does not constitute a "new program." However, although school districts are required to "take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause []" (*Crawford, supra*, at p. 305, italics omitted, citing *Jackson*), the courts have been wary of requiring specific steps in advance of a demonstrated need for intervention (*Crawford*, at pp. 305-306; *Jackson, supra*, at pp. 881-882; *Swann v. Board of Education* (1971) 402 U.S. 1, 18-21 [28 L.Ed.2d 554, 567-570, 91 S.Ct. 1267]). On the other hand, courts have required specific factors be considered in determining whether a school is segregated (*Keyes v. School District No. 1, Denver, Colo.* (1973) 413 U.S. 189, 202-203 [37 L.Ed.2d 548, 559-560, 93 S.Ct. 2686]; *Jackson, supra*, at p. 882).

The phrase "higher level of service" is not defined in [article XIII B](#) or in the ballot materials. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 50.) A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. (*Id.*, at pp. 54-56.) However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have suggested that certain steps and approaches may be helpful, the Executive Order and guidelines require specific actions. For example, school districts are to conduct mandatory biennial racial and ethnic surveys, develop a "reasonably feasible" plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the "reasonably feasible" description of *Jackson* and *Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the

report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "[O]nly those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."

2. *The Executive Order Constitutes a State Mandate*

For the sake of clarity we quote [Section 6](#) in full: "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 *174 reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) *Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*" (Italics added.) This amendment became effective July 1, 1980. ([Art. XIII B, § 10.](#)) Again, the Executive Order became effective September 16, 1977.

State argues there is no constitutional ground for reimbursement because (a) with reference to the language of exception (c) of [Section 6](#), the Executive Order is neither a statute nor an executive order or regulation implementing a statute; (b) recent legislation limits reimbursement to certain costs incurred after July 1, 1980, the effective date of the constitutional amendment; and (c) LBUSD failed to exhaust administrative procedures for reimbursement of [Section 6](#) claims ([Gov. Code, § 17500](#) et seq.). We conclude that recovery is available under [Section 6](#).

(a) *Form of Mandate*

State argues the Executive Order is not a state mandate because, with reference to exception (c) of [Section 6](#), it is neither a statute nor an executive order implementing a statute.

(11) In construing the meaning of [Section 6](#), we must determine the intent of the voters by first looking to the language itself ([County of Los Angeles v. State of California, supra, 43 Cal.3d 46, 56](#)), which "'should be construed in accordance with the natural and ordinary meaning of its words.'" [Citation.]" ([ITT World Communications, Inc. v. City and County of San Francisco](#) (1985) 37 Cal.3d 859, 865 [210

[Cal.Rptr. 226, 693 P.2d 811](#)].) The main provision of [Section 6](#) states that whenever the Legislature or any state agency "mandates" a new program or higher level of service, the state must provide reimbursement. (12) We understand the use of "mandates" in the ordinary sense of "orders" or "commands," concepts broad enough to include executive orders as well as statutes. As has been noted, "[t]he concern which prompted the inclusion of [section 6](#) in [article XIII B](#) was the perceived attempt by the state to enact legislation *or adopt administrative orders* creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." ([County of Los Angeles v. State of California, supra, 43 Cal.3d at p. 56.](#)) It is clear that the primary concern of the voters was the increased financial *175 burdens being shifted to local government, not the form in which those burdens appeared.

We derive support for our interpretation by reference to the ballot summary presented to the electorate. (Cf. [Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization](#) (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) The legislative analyst determined that the amendment would limit the rate of growth of governmental appropriations, require the return of taxes which exceeded amounts appropriated, and "[r]equire the state to reimburse local governments for the costs of complying with 'state mandates.'" The term "state mandates" was defined as "requirements imposed on local governments by legislation *or executive orders.*" (Italics added; Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 16.)

(9c) Although exception (c) of [Section 6](#) gives the state discretion whether to reimburse pre-1975 mandates which are either statutes or executive orders implementing statutes, we do not infer from this exception that reimbursability is otherwise dependent on the form of the mandate. We conclude that since the voters provided for mandatory reimbursement except for the three narrowly drawn exceptions found in (a), (b), and (c), there was no intent to exclude recovery for state mandates in the form of executive orders. Further, as State sets forth in its brief, the adoption of the Executive Order was "arguably prompted" by the decision in [Crawford v. Board of Education, supra, 17 Cal.3d 280](#), a case decided after the 1975 cutoff date of exception (c). Since case law and statutory law are of equal force,

there appears to be no basis on which to exclude executive orders which implement case law or constitutional law while permitting reimbursement for executive orders implementing statutes. We see no relationship between the proposed distinction and the described purposes of the amendment (*County Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56; *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545 [263 Cal.Rptr. 351]).

(b) *Recent Legislative Limits*

State contends that LBUSD cannot claim reimbursement under [Section 6](#) because [Government Code sections 17561](#) (Stats. 1986, ch. 879, § 6, p. 3041) and 17514 (Stats. 1984, ch. 1459, § 1, p. 5114) limit such recovery to mandates created by statutes or executive orders implementing statutes, and only for costs incurred after July 1, 1980.

As discussed above, the voters did not intend to limit reimbursement of costs only to those incurred pursuant to statutes or executive orders implementing *176 statutes except as set forth in exception (c) of Section 6. We presume that when the Legislature passed [Government Code sections 17561](#) and [17514](#) it was aware of Section 6 as a related law and intended to maintain a consistent body of rules. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449].) As discussed above, the limitations suggested by State are confined to exception (c).

Further, the state must reimburse costs incurred pursuant to mandates enacted after January 1, 1975, although actual payments for reimbursement were not required to be made prior to July 1, 1980, the effective date of Section 6. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 547-548; *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 191-194 [203 Cal.Rptr. 258], disapproved on other grounds in *County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 58, fn. 10.)

(c) *Administrative Procedures*

The Legislature passed [Government Code section 17500](#) et seq. (Stats. 1984, ch. 1459, § 1, p. 5113), effective January 1, 1985 (Stats. 1984, ch. 1459, § 1, p. 5123), to aid the implementation of Section 6 and to consolidate the procedures for reimbursement under statutes found in the Revenue and Taxation Code. This legislation created the Commission,

which replaced the Board, and instituted a number of procedural changes. ([Gov. Code, § § 17525, 17527](#), subd. (g), 17550 et seq.) The Legislature intended the new system to provide "the sole and exclusive procedure by which a local agency or school district" could claim reimbursement. ([Gov. Code, § 17552.](#)) (13) State argues that since LBUSD never made its claim before the Commission, it failed to exhaust its administrative remedies and cannot now receive reimbursement under section 6.

As discussed, the Board decisions favorable to LBUSD became administratively final in 1984. The Commission was not in place until January 1, 1985. There is no evidence in the record that the Commission did not consider these decisions to be final.

State argues the Commission was given jurisdiction over all claims which had not been included in a local government claims bill enacted before January 1, 1985. ([Gov. Code, § 17630.](#)) State is correct. However, the subject claim was included in such a bill, but the bill was signed into law after the recommended appropriation had been deleted. Under the statutory scheme, the only relief offered a disappointed claimant at such juncture is an action in declaratory relief to declare a subject executive order void *177 (former Rev. & Tax Code, § 2255, subd. (c); Stats. 1982, ch. 1638, § 7, pp. 6662-6663) or unenforceable ([Gov. Code, § 17612](#), subd. (b); Stats. 1984, ch. 1459, § 1, p. 5121) and to enjoin its enforcement. LBUSD pursued this remedy and in addition petitioned for writ of mandate ([Code Civ. Proc., § 1085](#)) to compel reimbursement. There is no requirement to seek further administrative review. Indeed, to do so after the Legislature has spoken would appear to be an exercise in futility.

We conclude that Section 6 provides reimbursement to LBUSD because the Executive Order required a higher level of service and because the Executive Order constitutes a state mandate.

B. Section 2234

As set forth in the procedural history of this case, the Board originally declined to consider the Claim as a claim made under [section 2234](#) on the ground that it lacked jurisdiction to do so. LBUSD petitioned for judicial relief, and the trial court held that the Board had jurisdiction and must consider the claim on its merits. The Board did not appeal that decision. State raised the jurisdiction issue as an affirmative defense to the second petition for writ of mandate filed by

LBUSD and presents it again for our consideration. (14) Of course, lack of subject matter jurisdiction may be raised at any time. (*Stuck v. Board of Medical Examiners* (1949) 94 Cal.App.2d 751, 755 [211 P.2d 389].)

Former section 2250 provided: "The State Board of Control, pursuant to the provisions of this article, shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*. [¶] Notwithstanding any other provision of law, this article shall provide the sole and exclusive procedure by which the Board of Control shall hear and decide upon a claim that a local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*." (Italics added; Stats. 1978, ch. 794, § 5, p. 2549.) Given the clear, unambiguous language of the statute, there is no need for construction. (*West Covina Hospital v. Superior Court* (1986) 41 Cal.3d 846, 850 [226 Cal.Rptr. 132, 718 P.2d 119, 60 A.L.R.4th 1257].) (15a) We conclude that the Board had jurisdiction to consider a claim filed under former section 2234. However, as discussed below, the 1977 Executive Order falls outside the purview of [section 2234](#).

Former section 2231 provided: "(a) ... The state shall reimburse each school district only for those 'costs mandated by the state', as defined in *178 [Section 2207.5](#)." (Stats. 1982, ch. 1586, § 3, p. 6264.) In part, former section 2207.5 defines "costs mandated by the state" as increased costs which a school district is required to incur as a result of certain new programs or certain increased program levels or services mandated by an executive order issued after January 1, 1978. (Stats. 1980, ch. 1256, § 5, pp. 4248-4249.) As previously stated, the Executive Order in the case at bar was issued September 8, 1977.

Former section 2234, pursuant to which LBUSD initially filed its claim, does not itself contain language indicating a time limitation: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for such costs incurred after the operative date of such mandate." (Stats. 1980, ch. 1256, § 11, p. 4251.)

State asserts that the January 1, 1978, limitation of [sections 2231](#) and [2207.5](#) applies to [section 2234](#),

preventing reimbursement for costs expended pursuant to the September 8, 1977, Executive Order; LBUSD argues [section 2234](#) is self-contained and without time limitation.

(16) It is a fundamental rule of statutory construction that a statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. (*Moore v. Panish* (1982) 32 Cal.3d 535, 541 [186 Cal.Rptr. 475, 652 P.2d 32]; *Pitman v. City of Oakland* (1988) 197 Cal.App.3d 1037, 1042 [243 Cal.Rptr. 306].) The legislative history of a statute may be considered in ascertaining legislative design. (*Walters v. Weed* (1988) 45 Cal.3d 1, 10 [246 Cal.Rptr. 5, 752 P.2d 443].)

The earliest version of [section 2234](#) is found in former section 2164.3, subdivision (f), which provided reimbursement to a city, county, or special district for "a service or program [provided] at its option which is subsequently mandated by the state" Reimbursement was limited to costs mandated by statutes or executive orders enacted or issued after January 1, 1973. (Stats. 1972, ch. 1406, § 3, pp. 2962-2963.)

In 1973, section 2164.3 was amended to provide reimbursement to school districts for costs mandated by statutes enacted after January 1, 1973 (subd. (a)), *but it expressly excluded school districts from reimbursement for costs mandated by executive orders* (subd. (d)). (Stats. 1973, ch. 208, § 51, p. 565.) Later that same year, the Legislature repealed section 2164.3 (Stats. 1973, ch. 358, § 2, p. 779) and added [section 2231](#), which took over the pertinent *179 reimbursement provisions of section 2164.3 virtually unchanged. (Stats. 1973, ch. 358, § 3, pp. 779, 783-784.)

In 1975, the Legislature removed the time limitation language from [section 2231](#) and incorporated it into a new section, 2207. (Stats. 1975, ch. 486, § 1.8, pp. 997-998.) After this change, [section 2231](#) then provided in pertinent part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207. *The state shall reimburse each school district only for those 'costs mandated by the state' specified in subdivision (a) of Section 2207*" (Italics added; Stats. 1975, ch. 486, § 7, pp. 999-1000.) Subdivision (a) of section 2207 limited reimbursement solely to costs mandated by statutes enacted after January 1, 1973.

At this same juncture, the Legislature further

amended [section 2231](#) by deleting the provision for "subsequently mandated" services or programs and incorporating that provision into a new [section, 2234](#) (Stats. 1975, ch. 486, § 9, p. 1000), the section under which LBUSD would eventually make its claim. The substance of [section 2234](#) (see fn. 2, *ante*) remained unchanged until its repeal in 1986. (Stats. 1977, ch. 1135, § 8.6, p. 3648; Stats. 1980, ch. 1256, § 11, pp. 4251-4252; Stats. 1986, ch. 879, § 25, p. 3045.)

Next, [section 2231](#) was amended to show that with regard to school districts, "costs mandated by the state" were now defined by a new [section, 2207.5](#). (Stats. 1977, ch. 1135, § 7, pp. 3647-3648.) [Section 2207.5](#) limited reimbursement to costs mandated by statutes enacted after January 1, 1973, and *executive orders issued after January 1, 1978*. (Stats. 1977, ch. 1135, § 5, pp. 3646-3647.) (No further pertinent amendments to [section 2231](#) occurred; see Stats. 1978, ch. 794, § 1.1, p. 2546; Stats. 1980, ch. 1256, § 8, pp. 4249-4250; Stats. 1982, ch. 734, § 3, p. 2912.) The distinction between statutes and executive orders was preserved when [section 2207.5](#) was amended in 1980 (Stats. 1980, ch. 1256, § 5, pp. 4248-4249) and was in effect at the time of the Board hearing.

(15b) This survey teaches us that with respect to the reimbursement process, the Legislature has treated school districts differently than it has treated other local government entities. The Legislature initially did not give school districts the right to recover costs mandated by executive orders; and when this option was made available, the effective date differed from that applicable to other entities. The Legislature consistently limited reimbursement of costs by reference to the effective dates of statutes and executive orders and nothing indicates the state intended recovery of costs to be open-ended. *180

Because the "subsequently mandated" provision of [section 2234](#) originally was contained in sections which set forth specific date limitations (former sections 2164.3 and 2231), we conclude the Legislature likewise intended to limit claims made pursuant to [section 2234](#). The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs, provided the claimant meets other requirements. Since the September 1977 Executive Order falls outside the January 1, 1978, limit set by [section 2207.5](#), [section 2234](#) does not provide for reimbursement to LBUSD.

III. The Award

The full text of the award as provided by the judgment is set forth in an appendix to this opinion. In part, the judgment states that there are appropriated funds in budgets for the DOE, the Commission, the Reserve for Contingencies or Emergencies, and the Special Fund for Economic Uncertainties, "or similarly designated accounts" which are " 'reasonably available' " to reimburse LBUSD for the state mandated costs it has incurred. (Appendix, pars. 3, 2.) The State Controller is commanded to pay the claims plus interest "at the legal rate" from the described appropriations for fiscal years 1984-1985 through 1987-1988 and "subsequently enacted State Budget Acts." (Appendix, par. 7.) The judgment declares that the deletion of funding for reimbursement of costs incurred in compliance with the Executive Order was invalid and unconstitutional. (Appendix, par. 12.) Finally, the Fines and Forfeiture Funds in the custody of the Auditor-Controller of Los Angeles County are held to be not reasonably available for reimbursement. (Appendix, par. 5.)

A. State Position

(17a) State contends the trial court's award is contrary to California law, asserting that it constitutes an invasion of the province of the Legislature and therefore a judicial usurpation of the republican form of government guaranteed by the [United States Constitution, Article IV, section 4](#).

(18) A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. ([Cal. Const., art. III, § 3](#); art. XVI, § 7; [Mandel v. Myers](#) (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; [Carmel Valley Fire Protection Dist. v. State of California, supra](#), 190 Cal.App.3d at p. 538.) However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. ([Mandel](#), at p. 540; [Carmel Valley](#), at pp. 539-540.) The test is whether such funds are "reasonably available for the *181 expenditures in question" ([Mandel](#), at p. 542; [Carmel Valley](#), at pp. 540-541.) Funds are "reasonably available" for reimbursement when the purposes for which those funds were appropriated are "generally related to the nature of costs incurred" ([Carmel Valley](#), at p. 541.) There is no requirement that the appropriation specifically refer to the particular expenditure ([Mandel](#) at pp. 543-544, [Carmel Valley](#) at pp. 540; [Committee to Defend Reproductive Rights v. Cory](#) (1982) 132 Cal.App.3d 852, 857-858 [183 Cal.Rptr. 475]), nor

must past administrative practice sanction coverage from a particular fund (*Carmel Valley*, at p. 540).

(17b) As previously stated, the trial court found the subject funds were "reasonably available." No party requested a statement of decision, and therefore it is implied that the trial court found all facts necessary to support its judgment. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793 [218 Cal.Rptr. 39, 705 P.2d 362]; *Homestead Supplies, Inc. v. Executive Life Ins. Co.* (1978) 81 Cal.App.3d 978, 984 [147 Cal.Rptr. 22].) We now examine the record to ascertain whether substantial evidence supports the decision of the trial court.

The Board having approved reimbursement under the Executive Order, reported to the Legislature that "[t]he categories of reimbursable costs include, but are not limited to: (1) voluntary pupil assignment or reassignment programs, (2) magnet schools or centers, (3) transportation of pupils to alternative schools or programs, (5) [*sic*, no item (4)] racially isolated minority schools, (6) costs of planning, recruiting, administration and/or evaluation, and (7) overhead costs." The guidelines set out comprehensive steps to be taken by school districts in order to be in compliance with the Executive Order.

The peremptory writ of mandate, issued the same date as the judgment, designated funds in specific account numbers and, in addition, a special fund as available for reimbursement. We take judicial notice of the relevant budget enactments and [Government Code sections 16418](#) and [16419](#) ([Evid. Code, § § 459](#), subd. (a), 452) and address these designations *seriatim*.

The line item account numbers for the DOE for fiscal years 1984-1985 through 1987-1988 set forth in the writ are as follows: 6100-001-001, 6100-001-178, 6100-015-001, 6100-101-001, 6100-114-001, 6100-115-001, 6100-121-001, 6100-156- 001, 6100-171-178, 6100-206-001, 6100-226-001.

An examination of the relevant budget acts Statutes 1985, chapter 111; Statutes 1986, chapter 186; Statutes 1987, chapter 135; and final budgetary changes as published by the Department of Finance for each year, shows *182 that appropriations in the 11 DOE line item account numbers have supported a very broad range of activities including reimbursement of costs for both mandated and voluntary integration programs, assessment programs, child nutrition, meals for needy pupils, participation in educational commissions,

administration costs of various programs, proposal review, teacher recruitment, analysis of cost data, school bus driver instructor training, shipping costs for instructional materials, local assistance for school district transportation aid, summer school programs, local assistance to districts with high concentrations of limited- and non-English-speaking children, adult education, driver training, Urban Impact Aid, and cost of living increases for specific programs. Further evidence regarding the uses of these funds is found in the deposition testimony of William C. Pieper, Deputy Superintendent for Administration with the State Department of Education, who stated that local school districts were being reimbursed for the costs of desegregation programs from line item account numbers 6100-114-001 and 6100-115-001 in the 1986 State Budget Act.

Comparing the requirements of the Executive Order and guidelines with the broad range of activities supported by the DOE budget, we conclude that the subject funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of the costs incurred.

With regard to the Commission, the writ sets out three line item account numbers: 8885-001-001; 8885-101-001; and 8885-101-214. A review of the relevant budget acts shows that the first line item provides funding for support of the Commission, and line item number 8885-101-001 provides funding specifically for local assistance "in accordance with the provisions of [Section 6 of Article XIII B of the California Constitution](#)" (Stats. 1986, ch. 186.) Line item number 8885-101-214 also provides funds for "local assistance." Since the Commission was created specifically to effect reimbursements for qualifying claims, we conclude there is a general relationship between the purpose of the appropriations and the requirements of the Executive Order.

Line item 9840-001-001 of the Reserve for Contingencies or Emergencies defines "contingencies" as "proposed expenditures arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which, in the judgment of the Director of Finance, constitute cases of actual necessity." (All relevant budget acts.) In the instant case, previous to the issuance of the Executive Order, LBUSD could not have anticipated the expenditures necessary to bring it into compliance. Further, the Legislature refused to appropriate the necessary funds *183 to directly reimburse the district for these

expenditures. The necessity exists by virtue of the writ and judgment issued by the trial court. Therefore, this line item, and three others which also support the reserve (9840-001-494, 9840-001- 988, 9840-011-001) are generally related to the costs. [FN16]

FN16 The costs do not come within past or current definitions of "emergency," which are, respectively, as follows. "[P]roposed expenditures arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which in the judgment of the Director of Finance require immediate action to avert undesirable consequences or to preserve the public peace, health or safety." (Fiscal years 1984-1985, 1985-1986.) "[E]xpenditure incurred in response to conditions of disaster or extreme peril which threaten the health or safety of persons or property within the state." (Fiscal years 1986-1987 forward.)

Finally the writ lists as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts" An examination of [Government Code sections 16418](#) and [16419](#) relating to the special fund shows only one use of this reserve: establishment of the Disaster Relief Fund "for purposes of funding disbursements made for response to and recovery from the earthquake, aftershocks, and any other related casualty." No evidence in the record indicates a general relationship between this purpose and the costs incurred by LBUSD. We conclude, therefore, that this source of funding cannot be used for reimbursement. This source is stricken from the judgment.

The description of further sources of funding as "similarly designated accounts" fails to sufficiently identify these sources and we therefore strike this part of the judgment.

In a supplemental brief, LBUSD requests this court to take judicial notice of the Budget Acts of 1988-1989 (Stats. 1988, ch. 313) and 1989-1990 (Stats. 1989, ch. 93) pursuant to the Evidence Code ([Evid. Code, § § 451](#), subd. (a), 452, subd. (a), 452, subd. (c), 459) and to order that the amounts set forth in the judgment and writ be satisfied from specific line item accounts in these later budgets and from the Special Fund for Economic Uncertainties. [FN17]

FN17 LBUSD identifies the line items accounts as follows: DOE-6110-001- 001, 6110-001-178, 6110-015-001, 6110-101-001, 6110-114-001, 6110-115-001, 6110-121-001, 6110-156-001, 6110-171-178, 6110-226-001, 6110-230-001; Commission-8885-001-001, 8885-101-001, 8885-101-214; Reserve for Contingencies or Emergencies-9840-001-001, 9840-001-494, 9840-001-988, 9840-011-001.

(19) "An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. [Citation.]" ([Carmel Valley, supra, 190 Cal.App.3d at p. 557.](#)) (17c) We have reviewed the designated budget acts and conclude that the specified line item accounts for DOE, the Commission, *184 and the Reserve for Contingencies and Emergencies provide funds for a broad range of activities similar to those set out above and therefore are generally related to the nature of the costs incurred. However, for the reasons previously discussed, we decline to designate the Special Fund for Economic Uncertainties as a source for reimbursement.

While we have concluded that certain line item accounts are generally related to the nature of the costs incurred, there must also be evidence that at the time of the order the enumerated budget items contained sufficient funds to cover the award. ([Gov. Code, § 12440](#); [Mandel v. Myers, supra, 29 Cal.3d at p. 543](#); [Carmel Valley, supra, 190 Cal.App.3d at p. 541](#); cf. [Baggett v. Dunn \(1886\) 69 Cal. 75, 78 \[10 P. 125\]](#); [Marshall v. Dunn \(1886\) 69 Cal. 223, 225 \[10 P. 399\].](#)) The record before us contains evidence regarding balances at various points in time for some of the line item accounts, but that evidence is primarily in the form of uninterpreted statistical data. We have not found a clear statement which would satisfy this requirement. Furthermore, not every line item was in existence every fiscal year. In addition, those which entered the budgetary process did not always survive it unscathed. Therefore, we remand the matter to the trial court to determine with regard to the line item account numbers approved above whether funds sufficient to satisfy the award were available at the time of the order. (Cf. [County of Sacramento v. Loeb \(1984\) 160 Cal.App.3d 446, 454-455 \[206 Cal.Rptr. 626\].](#)) If the trial court determines that the unexhausted funds remaining in the specified

appropriations are insufficient, the trial court order can be further amended to reach subsequent appropriated funds. (*County of Sacramento* at p. 457; *Serrano v. Priest* (1982) 131 Cal.App.3d 188, 198 [182 Cal.Rptr. 387].)

(20) Having concluded that certain appropriations are generally available to reimburse LBUSD, we turn to an additional issue raised by State: that the "finding" by the Legislature that the Executive Order does not impose a "state- mandated local program" prevents reimbursement.

Unsupported legislative disclaimers are insufficient to defeat reimbursement. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 541-544.) As discussed, LBUSD, pursuant to [Section 6](#), has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right. (*Hale v. Bohannon* (1952) 38 Cal.2d 458, 471 [241 P.2d 4].)

B. DOE Contentions

DOE is sympathetic to LBUSD's position. On appeal, it takes no stand on the issue whether the Executive Order constitutes a state mandate within *185 the meaning of [Section 6](#). (21) The thrust of its appeal is that, if there is a mandate, the DOE budget is an inappropriate source of funding in comparison with other budget line item accounts included in the order.

We conclude to the contrary because logic dictates that DOE funding be the initial and primary source for reimbursement. As discussed, the test set forth in *Mandel* and *Carmel Valley* is whether there is a general relationship between budget items and reimbursable expenditures. Since the Executive Order was issued by DOE, it is not surprising that the evidence overwhelmingly supports the finding of the trial court that this general relationship exists with regard to the DOE budget.

While we also have concluded that certain line item accounts for entities other than DOE are also appropriate sources of funding, the record does not provide the statistical data necessary to determine how far the order will reach with regard to these additional sources of support.

DOE also contends that reimbursement for expenditures in fiscal years 1977- 1978, 1978-1979, and 1979-1980 cannot be awarded under [Section 6](#) because the amendment was not effective until July

1, 1980. As discussed, this argument has been previously rejected. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 547-548; *City of Sacramento v. State of California, supra*, 156 Cal.App.3d 182, 191-194, disapproved on other grounds in *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 58, fn. 10.)

(22) Finally, DOE contends that interest should have been awarded at the rate of 6 percent per annum pursuant to [Government Code section 926.10](#) rather than at the legal rate provided under [article XV, section 1, paragraph \(2\) of the California Constitution](#).

[Government Code section 926.10](#) is part of the California Tort Claims Act ([Gov. Code, § 900](#) et seq.) which provides a statutory scheme for the filing of claims against public entities for alleged injuries; it makes no provision for claims for reimbursement for state mandated expenditures. In *Carmel Valley* a judgment awarding interest at the legal rate was affirmed. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 553.) We decline the invitation of DOE to apply another rule.

C. Cross Appeal of LBUSD

(23) LBUSD seeks reversal of that part of the judgment holding that monies in the Fines and Forfeitures Funds in the custody and possession of *186 cross-respondent Auditor-Controller of the County of Los Angeles (County Controller) for transfer to the state treasury are not reasonably available for reimbursement of its state mandated expenditures. [FN18]

FN18 In its first amended petition, LBUSD listed the following code sections as appropriate sources of reimbursement: "[Penal Code Sections 1463.02, 1463.03, 1403.5A and 1464](#); [Government Code Sections 13967, 26822.3 and 72056](#); [Health and Safety Code Section 11502](#); and [Vehicle Code Sections 1660.7, 42003, and 41103.5](#)."

As previously stated, funds are "reasonably available" when the purposes for which those funds were appropriated are generally related to the nature of the costs incurred. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 540-541.) LBUSD does not cite,

nor have we found, any evidence in the record showing the use of those funds once they are transmitted to the state and that those funds are then "reasonably available" to satisfy the Claim. We cannot conclude as a matter of law that a general relationship exists between those funds and the nature of the costs incurred pursuant to the Executive Order. LBUSD has failed to carry its burden of proof and the trial court correctly decided these funds were not "reasonably available" for reimbursement.

Nor have we concluded that there is any ground on which the funds could be made available to LBUSD while in the possession of the county Auditor-Controller. The instant case differs from *Carmel Valley* wherein we affirmed an order which authorized a county to satisfy its claims against the state by offsetting fines and forfeitures it held which were due the state. The *Carmel Valley, supra*, 190 Cal.App.3d 521, holding was based on the right of offset as "a long-established principle of equity." (*Id.* at p. 550.) That is a different standard than the standard of "generally related to the nature of costs incurred." In the case at bar there is no set-off relationship between county and LBUSD.

Disposition

We conclude that because the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case, the trial court should have allowed State to challenge the decisions of the Board. However, we also determine, as a question of law, that the Executive Order requires local school boards to provide a higher level of service than is required constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. Former Revenue and Tax Code section 2234 does not provide reimbursement of the subject claim. *187

Based on uncontradicted evidence, we modify the decision of the trial court by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts." We also modify the judgment to include charging orders against certain funds appropriated through subsequent budget acts.

We affirm the decision of the trial court that the Fines and Forfeitures Funds are not "reasonably available" to satisfy the Claim.

Finally, we remand the matter to the trial court to

determine whether at the time of its order, unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court is also directed to determine this same issue with respect to the charging order.

The judgment is affirmed as modified. Each party is to bear its own costs on appeal.

Ashby, J., and Boren, J., concurred.

Appellants' petitions for review by the Supreme Court were denied February 28, 1991. Lucas, C. J., did not participate therein. *188

Appendix

The superior court judgment provides in pertinent part: "It Is Ordered, Adjudged and Decreed That: "1. The requirements contained in [Title 5, California Administrative Code, Sections 90-101](#) constitute a reimbursable State-mandate which cannot be challenged by State Respondents or Respondent DOE because of the doctrines of administrative collateral estoppel and waiver.

"2. There are appropriated funds from specified line items in the 1984, 1985, 1986 and 1987 budgets which are 'reasonably available' to reimburse Petitioner for State-mandated costs it has occurred [*sic*] as a result of its compliance with the requirements of [Title 5, California Administrative Code, Sections 90-101](#).

"3. The funds appropriated by the Legislature for:

"(a) the support of the Department of Education, including, but not limited, to the Department's General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', 'Special Fund for Economic Uncertainties' or similarly designated accounts, are 'reasonably available' and may properly be and should be encumbered and expended for the reimbursement of State-mandated costs in the amount of \$28,014,869.00, plus applicable interest, as incurred by Petitioner and as computed by Petitioner in

compliance with Parameters and Guidelines adopted by the State Board of Control.

"4. The law in effect at the time that Petitioner's claim was processed provided for the computation of a specific claim amount for specific fiscal years based on Parameters and Guidelines, or claiming instructions, adopted in April 1984 and a Statewide Cost Estimate adopted on August 23, 1984, both of which are administrative actions of the State Board of Control which have not been challenged by State Respondents. The computations made pursuant to the Parameters and Guidelines and Statewide Cost Estimate are specific and ascertainable and subject to audit by the State Controller under [Government Code section 17558](#).

"5. The Court decrees that State funds entitled the 'Fines and Forfeitures Funds' under the custody and control of Respondent Bloodgood, are not reasonably available for satisfaction of Petitioner's claim for reimbursement of State-mandated costs.

"6. A peremptory writ of mandamus shall issue under the seal of this Court, commanding State Respondents and Respondent Doe to comply with [Article XIII B, Section 6 of the California Constitution](#) and [Government Code Section 17565](#) and reimburse petitioner for:

"(a) State-mandated costs in the amount of \$24,164,593.00, incurred as a result of its compliance with the requirements of [Title 5, California Administrative Code, Sections 90-101](#) during fiscal years 1977-78 through 1982-1983, plus interest at the legal rate from September 28, 1985; and

"(b) State-mandated costs in the amount of \$3,850,276.00, incurred as a result of Petitioner's compliance with the requirements of [Title 5, California Administrative Code, Sections 90-101](#) during fiscal years 1983-84 and 1984- 85, plus interest at the legal rate from September 28, 1985.

"7. Said peremptory writ shall command Respondent Gray Davis, State Controller, or his successor-in-interest, to pay the claims of Petitioner, plus interest at the legal rate from *189 September 28, 1985 from the appropriations in the State Budget Acts for the 1984-85, 1985-86, 1986-87 and 1987-88 fiscal years, and the subsequently enacted State Budget Acts, which include, or will include appropriations for:

"(a) the support of the Department of Education, including, but not limited to the Department's

General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', Special Fund for Economic Uncertainties' or similarly designated accounts, which are 'reasonably available' to be encumbered and expended for the reimbursement of State- mandated costs incurred by Petitioner and further shall compel Elizabeth Whitney, Acting State Treasurer, or her successor-in-interest, to make payments on the warrants drawn by Respondent Gray Davis, State Controller upon their presentation for payment by Petitioner without offset or attempt to offset against other monies due and owing Petitioner until Petitioner is reimbursed for all such costs.

"8. Said Peremptory Writ of Mandate also shall command Respondent Jesse R. Huff, Director of the State Department of Finance, to perform such actions as may be necessary to effect reimbursement required by other portions of this Judgment, including but not limited to, those actions specified in Chapter 135, Statutes of 1987, Section 2.00, pp. 549-553, or with respect to the Special Fund for Economic Uncertainties.

"9. Pending the final disposition of this proceeding, State Respondents and Respondent DOE, and each of them, their successors in office, agents, servants and employees and all persons acting in concert or participation with them, are hereby enjoined or restrained from directly or indirectly expending from the appropriations described in Paragraph No. 7 hereinabove any sums greater than that which would leave in said appropriations at the conclusion of the respective fiscal years an amount less than the reimbursement amounts claimed by Petitioner together with interest at the legal rate through payment of said reimbursement amount. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"10. Pending the final disposition of this proceeding State Respondents and Respondent DOE, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly causing to revert the reimbursement award sum from the appropriations described in Paragraph No. 7 hereinabove to the general funds of the State of

California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"11. The State Respondents and Respondent Doe have a continuing obligation to reimburse Petitioner for costs incurred in compliance with the requirements contained in [Title 5, California Administrative Code, Section 90-101](#) in the fiscal years subsequent to its [sic] claims for expenditures in fiscal years 1977-78 through 1984-85 as set forth in the First Amended Petition, as amended, and the accompanying Motion For the Issuance Of A Writ Of Mandate.

"12. The deletion of funding for reimbursement of State-mandated costs incurred in compliance with [Title 5, California Administrative Code, Sections 90-101](#) from Chapter 1175, Statutes of 1985 was invalid and unconstitutional.

"13. Respondent Gray Davis, State Controller, shall retain the right to audit the claims and records of the Petitioner pursuant to [Government Code Section 17561\(d\)](#) to verify the actual dollar amount of the reimbursement award sum.

"14. The Court reserves and retains jurisdiction to effect any appropriate remedy at law or equity which may be necessary to enforce its judgment or order.
***190**

"15. Petitioner shall recover from State Respondents and Respondent DOE costs in this proceeding in the amount of 1,863.54.

"Dated: 3-2, 1988 "/s/ Weil

"Robert I. Weil

"Judge of The Superior Court" ***191**

Cal.App.2.Dist.,1990.

Long Beach Unified School Dist. v. State

END OF DOCUMENT

C

COUNTY OF FRESNO, Plaintiff and Appellant,

v.

STEPHEN R. LEHMAN, as Assistant Executive
Director, etc., et al., Defendants
and Respondents.

No. F013637.

Court of Appeal, Fifth District, California.

Apr 17, 1991.

SUMMARY

A county was ordered to pay attorney fees to an opposing party, pursuant to [Code Civ. Proc., § 1021.5](#) (private attorney general doctrine. In the county's subsequent action against the state for reimbursement under [Cal. Const., art. XIII B, § 6](#) (state reimbursement of counties for costs of state-mandated programs), the trial court found in favor of the state. (Superior Court of Fresno County, No. 388123-2, Gene M. Gomes, Judge.)

The Court of Appeal affirmed. The court initially held that the action was not barred by the three-year statute of limitations of [Code Civ. Proc., § 338](#) (action on statutory liability), even though, in a prior test case filed by a different local entity, the Commission on State Mandates had found that a county could not obtain reimbursement for fees paid under [Code Civ. Proc., § 1021.5](#). The court held that the statute of limitations could not begin to run against the county until it had paid the attorney fees, and although the limitations period had run on the earlier decision, the county was not bound by it, since it was not a party to the earlier case, and was not in privity with the entity that had filed it. The court also held, however, that the county was not entitled to reimbursement, since [Code Civ. Proc., § 1021.5](#), was not a state-mandated program, which is defined as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on a local government. (Opinion by Buckley, J., with Best, P.J., and Stone (W. A.), J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Limitation of Actions § 27--Period of Limitation--Statutory Liabilities--State-mandated Costs.

The three-year statute of *341 limitations for an action on a statutory liability ([Code Civ. Proc., § 338](#)) did not bar a county's test case against the state, brought under [Cal. Const., art. XIII B, § 6](#) (reimbursement of local agency for increased costs from state-mandated programs), where the county sought reimbursement for attorney fees it had paid under [Code Civ. Proc., § 1021.5](#) (award of attorney fees for enforcement of public right), even though, in a prior test case filed by a different local entity, the state Board of Control had found that a county was not entitled to reimbursement for fees paid under [Code Civ. Proc., § 1021.5](#), and the limitations period for challenging that decision had run. The statute of limitations could not begin to run against the county until it had paid the attorney fees, and the earlier decision could not cause the limitations period to commence against the county, since the county was not a party to the earlier case, and was not in privity with the local entity that had filed it.

(2) Limitation of Actions § 31--Commencement of Period--Accrual of Cause of Action.

A statute of limitations cannot begin to run until a cause of action accrues. A cause of action accrues when the person who owns it is entitled to bring and prosecute an action on it.

(3) Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties.

A person who is neither a party nor in privity with a party is not bound by a judgment, even if that person is vitally interested in and directly affected by the outcome of the action, since due process requires that the person have his or her own day in court.

(4a, 4b) State of California § 7--Actions--County's Entitlement to Reimbursement for State-mandated Program--Reimbursement for Attorney Fees Paid Under Private Attorney General Statute.

A county was not entitled to reimbursement from the state, under [Cal. Const., art. XIII B, § 6](#)

(reimbursement for increased costs from state-mandated programs), for attorney fees it paid under [Code Civ. Proc., § 1021.5](#) (private enforcement of right affecting public interest), since [Code Civ. Proc., § 1021.5](#), is not a state-mandated program, which is defined as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on local governments. Rather, [Code Civ. Proc., § 1021.5](#), may be applied against any individual or entity, whether public or private. The fact that [Code Civ. Proc., § 1021.5](#), prohibits an award of attorney fees in favor of a public agency does not render it a state-mandated program, since a public ***342** agency, by definition, works for the public good, and the purpose of the statute is to encourage private enforcement of public policies.

[See [Cal.Jur.3d, State of California, § 78](#); 7 **Witkin**, Cal. Procedure (3d ed. 1985) Judgment, § § 173-176.]

(5) State of California § 7--Actions--County's Entitlement to Reimbursement for State-mandated Costs--Question of Law.

The question of whether a cost is state-mandated, so as to entitle a local entity to reimbursement from the state under [Cal. Const., art. XIII B, § 6](#), is one of law.

(6) Costs § 17--Attorney Fees--Private Attorney General Doctrine--Purpose.

The purpose of [Code Civ. Proc., § 1021.5](#), authorizing an award of attorney fees for private enforcement of an important right affecting the public interest, is to encourage private litigation to enforce common interests of significant societal importance, where enforcement of such rights does not involve an individual's financial interests.

COUNSEL

Max E. Robinson, County Counsel, Phyllis M. Jay, Chief Deputy County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Cathy A. Neff and Linda A. Cabatic, Deputy Attorneys General, for Defendants and Respondents.

BUCKLEY, J.

Procedural History

Appellant County of Fresno (County) appeals a trial court's ruling sustaining a demurrer without leave to amend and granting judgment dismissing the County's petition for writ of mandate and complaint for declaratory relief. ***343**

County was ordered to pay attorney's fees in the amount of \$88,120 pursuant to [Code of Civil Procedure section 1021.5](#) [FN1] in Fresno Superior Court action No. 269458-7, Sequoia Community Health Foundation, etc. v. Board of Supervisors of Fresno County, et al.

FN1 [Code of Civil Procedure section 1021.5](#) states: "Upon motion, a court may award attorney's fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor."

County contends it is entitled to reimbursement of that amount from respondent State of California (State) by alleging that the expenditure arose out of a state-mandated new program or higher level of service pursuant to [California Constitution article XIII B, section 6](#). It interprets [Code of Civil Procedure section 1021.5](#), as enacted, as being such a state-mandated program or higher level of service.

County filed a test claim with respondent Commission on State Mandates (Commission) on November 25, 1987, for those costs (fees) paid by the County during the fiscal year 1986-1987. The test claim was administratively withdrawn, without a hearing, by the Commission. As a basis for the withdrawal, the Commission cited a prior test claim

filed by a different entity, decided by the State Board of Control on April 16, 1980. The Board of Control, in the prior claim, determined that [Code of Civil Procedure section 1021.5](#), enacted by Statutes of 1977, chapter 1197, did not mandate a new program or increase the level of service of an existing program within the definition of Revenue and Taxation Code former section 2207. (See discussion, *post*.)

County filed a petition for writ of mandate and a complaint for declaratory relief requesting in its first cause of action that the court issue a writ of mandate to compel the Commission to conduct a full hearing on the County's claim, deliver to the County a complete copy of documents submitted on the "first" claim, and issue a decision that chapter 1197 of Statutes of 1977 is a state-mandated program and that County is entitled to reimbursement of costs. As to the second cause of action, County requested a declaration that the Commission does not have jurisdiction to administratively refuse to hear any claims for reimbursement and to that extent, the Commission is unconstitutional and invalid.

State demurred to both the petition and complaint on the grounds that the court lacked subject matter jurisdiction because the statute of *344 limitations had run; the petition and complaint failed to state facts sufficient to constitute a cause of action; and the petition and complaint were uncertain. State also requested that the court take judicial notice of a decision of the Board of Control on July 25, 1979, on a claim regarding chapter 993 of the Statutes of 1973. That claim involved the creation of the Division of Occupational, Safety and Health Standards Board (OSHA).

The trial court granted State's request for judicial notice and sustained the demurrer without leave to amend based on two grounds. The statute of limitations had run because the cause of action accrued to County on April 16, 1980, by the Board of Control's determination, at that time, that the statute did not mandate a new program or increase the level of service. The court ruled no cause of action was stated by County in that [Code of Civil Procedure section 1021.5](#) does not constitute a new program or higher level of service under [California Constitution article XIII B, section 6](#).

The trial court also ruled that the statute enacting the private attorney general doctrine ([Code Civ. Proc., § 1021.5](#)) is not a program carrying out the governmental function of providing services to the poor. Rather, it is one of public policy, applying

generally to violators of the law. [FN2]

FN2 The record of the precedent case generating the test claim, Sequoia Community Health Foundation, etc. v. Board of Supervisors of Fresno County, et al., is not before us. However, it is apparent from the briefs and other materials herein that County was prohibited from carrying on certain practices involving, among other things, the disqualification of illegal aliens from treatment at Valley Medical Center, over which the board of supervisors had authority.

County appeals from the judgment of dismissal following the sustaining of the demurrer, citing numerous errors by the trial court.

Discussion

Denial of a test claim filed by one local entity does not constitute the accrual of a cause of action for purposes of the statute of limitations limiting judicial review for the test claim of a separate entity.

Although there is some uncertainty as to whether the prior test claim filed with the Board of Control involved a claim under Statutes of 1973, chapter 993 or Statutes of 1977, chapter 1197, our analysis is not dependent upon a specific determination here of the basis for the prior test claim. [FN3] *345 Therefore, we are not compelled to address the issue involving judicial notice raised by County.

FN3 County filed its petition for writ of mandate alleging error by the Commission in withdrawing from consideration the test claim of County on the basis of the denial of a prior test claim filed by a different local agency under Statutes of 1977, chapter 1197. Attached to the declaration of Pamela A. Stone in support of the petition for writ of mandate, etc. was a copy of a letter from Stephen R. Lehman to the County which indicated that the denial of the prior test claim under Statutes of 1977, chapter 1197, on April 16, 1980, compelled withdrawal since County's test claim was not the first test claim on the statute.

At the same time State filed its demurrer, it

filed a request for judicial notice at the hearing on demurrer. State requested that judicial notice be taken of the decision of the Board of Control with regard to Statutes of 1973, chapter 993 dated July 25, 1979. That statute relates to the creation of OSHA. The law and motion judge took judicial notice of the exhibits proffered by State and made a finding that they were relevant. Notwithstanding this, the court, in its order on demurrer, used the date set forth in the exhibit to the petition filed by County as the accrual of the cause of action.

It will be helpful for a complete understanding of the issues in this case and for their proper resolution, to set forth the procedure relating to claims for reimbursement of costs mandated by the state under the authorizing statutes at the time the "first" claim was decided on April 16, 1980, and at the time the claim was filed by County here. [FN4]

FN4 The record before us does not indicate what agency filed the 1980 claim. However, the parties here do not question that it was a different entity than Fresno County.

At the time the test claim was filed in 1980, the implementing statutes were [Revenue and Taxation Code section 2201](#) et seq. (Stats. 1973, ch. 358, § 3, p. 779.) [FN5] ([County of Contra Costa v. State of California](#) (1986) 177 Cal.App.3d 62, 69 [222 Cal.Rptr. 750].)

FN5 Much of Statutes of 1973, chapter 358, has been repealed. All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Section 2231, subdivision (a) provided that the state shall reimburse local agencies for all costs mandated by the state (defined in former § 2207). [FN6] Section 2250 et seq. provided a hearing procedure for the determination of claims by local governments. Former section 2218 stated that the first claim filed with respect to a statute is considered a "test claim." (See [County of Contra Costa v. State of California](#), *supra*, 177 Cal.App.3d 62, for a comprehensive discussion of the statutory scheme for reimbursement under § 2201 et seq.)

FN6 In pertinent part, former section 2207 refers to "any increased costs which a local agency is required to incur as a result of ...: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program; ..."

Effective January 1, 1985, the Legislature established the Commission to consider and determine claims based on state mandates. ([Gov. Code, § § 17500, 17525.](#)) The claim filed by County was filed pursuant to [Government Code section 17500](#) et seq., which procedures are similar to those which were followed before the Board. ([County of Contra Costa v. State of California](#), *supra*, 177 Cal.App.3d at p. 72.)

(1a) County correctly contends the statute of limitations could not begin to run until County had a right of action. (2) A cause of action *346 accrues when the person who owns it is entitled to bring and prosecute an action on it. ([Collins v. County of Los Angeles](#) (1966) 241 Cal.App.2d 451, 454 [50 Cal.Rptr. 586].) It was not until County was ordered to pay and paid those fees that County could apply for reimbursement under [Government Code section 17500](#) et seq.

(1b) State argues that since no public entity challenged the Board of Control's determination on April 16, 1980, that no mandate was imposed by Statutes of 1977, chapter 1197, the statute of limitations expired three years later. [FN7] In support of its argument, State cites the cases of [Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795] and [Los Angeles Unified School Dist. v. State of California](#) (1988) 199 Cal.App.3d 686 [245 Cal.Rptr. 140]. [Carmel Valley Fire Protection Dist.](#) is distinguishable and State misreads [Los Angeles Unified School Dist.](#)

FN7 [Code of Civil Procedure section 338](#) provides a three-year statute of limitations period for an action upon a liability created by statute.

In [Carmel Valley Fire Protection Dist. v. State of California](#), *supra*, 190 Cal.App.3d 521, the county filed a test claim for state-mandated costs related to

fire-protective clothing. The Board of Control determined in 1979 that a state mandate existed. No judicial review of that decision was sought. Thereafter, legislation was introduced to appropriate money to pay the costs. The Legislature failed to enact the appropriations bill. A petition for writ of mandate was then filed by the county in 1984. The court granted a peremptory writ. On appeal, the state sought to dispute the Board of Control's findings in 1979. The appellate court held that the state was collaterally estopped from attacking that prior determination. (*Id.* at p. 534.) Notwithstanding the state's contention that it was not in privity with the state agencies which participated in 1979, the court concluded that " 'agents of the same government are in privity with each other, ...' [Citation.]" (*Id.* at p. 535.)

The court found the requisite elements of administrative collateral estoppel, as set forth in [People v. Sims \(1982\) 32 Cal.3d 468 \[186 Cal.Rptr. 77, 651 P.2d 321\]](#), present: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. ([Carmel Valley Fire Protection Dist., supra, 190 Cal.App.3d at p. 535.](#))

It is undisputed that no privity exists between the County here and the local entity filing the test claim in 1980; therefore, collateral estoppel could not apply. (*[347 Summerford v. Board of Retirement \(1977\) 72 Cal.App.3d 128, 132 \[139 Cal.Rptr. 814\]](#); [County of L. A. v. Continental Corp. \(1952\) 113 Cal.App.2d 207, 222-223 \[248 P.2d 157\]](#).) (3) A person neither a party nor in privity is not bound by a judgment. It is immaterial that he may have been vitally interested in and directly affected by the outcome of the action; due process requires that he have his own day in court. (7 Witkin, Cal. Procedure (3d ed. 1985) Judgment, § 298, p. 737.)

Contrary to the assertions of State, [Los Angeles Unified School Dist. v. State of California, supra, 199 Cal.App.3d 686](#), does not preclude judicial action here. Rather, it held that the Los Angeles School District had the right to judicial review of the denial by the Board of Control of district's claim. (*Id.* at p. 689.) Furthermore, the statute of limitations was not in issue in [Los Angeles Unified School Dist.](#) The court stated that although it was proper for the board to rely on its prior decision and to refuse to hold a new public hearing pursuant to former section 2253.2, the district had the right to judicial review of that denial. (*Ibid.*)

From the foregoing discussion, we conclude the court erred in ruling that the statute of limitations precluded the filing of the action by County.

Code of Civil Procedure section 1021.5 does not constitute a state- mandated program.

(4a) Inasmuch as the trial court also sustained the demurrer for failure to state a cause of action, we must decide whether [Code of Civil Procedure section 1021.5](#) constitutes a state-mandated program. (5) The question of whether a cost is state-mandated is one of law. ([Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d 521, 536.](#)) (6) [Code of Civil Procedure section 1021.5](#) authorizes an award of attorney fees under a "private attorney general" theory to a successful litigant " 'in any action which has resulted in the enforcement of an important right affecting the public interest' " ([Woodland Hills Residents Assn., Inc. v. City Council \(1979\) 23 Cal.3d 917, 924- 925 \[154 Cal.Rptr. 503, 593 P.2d 200\]](#).) The purpose of awarding attorney's fees under the private attorney general theory is to encourage private litigation to enforce the common interests of significant societal importance when enforcement of such rights does not involve any individual's financial interests. ([Beach Colony II v. California Coastal Com. \(1985\) 166 Cal.App.3d 106, 114 \[212 Cal.Rptr. 485\]](#).)

[Code of Civil Procedure section 1021.5](#) is thought to be our Legislature's response to [Alyeska Pipeline Co. v. Wilderness Society \(1975\) 421 U.S. 240 \[44 L.Ed.2d 141, 95 S.Ct. 1612\]](#). ([Common Cause v. Stirling \(1981\) 119 Cal.App.3d 658, 662-663 \[174 Cal.Rptr. 200\]](#).) In [Alyeska](#), the United States Supreme Court held federal courts could not award attorney's fees in *[348](#) private attorney general actions without specific statutory authorization. ([Common Cause, supra, 119 Cal.App.3d at p. 662.](#)) Almost contemporaneously with the enactment of [section 1021.5](#), our Supreme Court rendered its decision in [Serrano v. Priest \(1977\) 20 Cal.3d 25 \[141 Cal.Rptr. 315, 569 P.2d 1303\]](#). [Serrano](#) held that California courts have inherent power to award attorney's fees in actions brought to vindicate policies based on the state Constitution. ([Common Cause, supra, 119 Cal.App.3d at p. 663.](#)) Later, our Supreme Court noted that "[w]hen other statutory criteria are satisfied, [[Code of Civil Procedure section 1021.5](#)] explicitly authorizes such award ... regardless of its source-constitutional, statutory or other." ([Woodland Hills Residents Assn., Inc. v. City Council, supra, 23](#)

[Cal.3d at p. 925.](#)) The award of attorney's fees is proper under [Code of Civil Procedure section 1021.5](#) if (1) plaintiff's action has resulted in the enforcement of an important right affecting the public interest; (2) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons; and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 317- 318 [193 Cal.Rptr. 900, 667 P.2d 704].)

(4b) The County contends that the private attorney general theory under that section is a "new program" or provides "an increased level of service of an existing program" pursuant to [California Constitution article XIII B, section 6](#), and County is, therefore, entitled to reimbursement for costs incurred in compliance with that section.

On November 6, 1979, California voters by an initiative measure enacted Proposition 4 and added article XIII B to the California Constitution (hereafter article XIII B) which became effective on July 1, 1980. This article imposed spending limits on the state and local governments and provided in [section 6](#):

"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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 50 [233 Cal.Rptr. 38, 729 P.2d 202].)

In construing the meaning of the language in [article XIII B, section 6](#), that the state reimburse local agencies for the costs of any "new program or *349 higher level of service," the Supreme Court defined "higher level of service" as state-mandated increases in the services provided by local agencies in existing "programs." The term "program" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique

requirements on local governments and *do not apply generally to all residents and entities in the state.*" (*County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56 italics added.) The intent underlying [article XIII B, section 6](#) was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities. (43 Cal.3d at pp. 56-57.)

As our Supreme Court also noted, "the drafters and the electorate had in mind subvention for the expense or increased cost of *programs administered locally*" (Italics added, 43 Cal.3d at pp. 49-50.) It would be tortuous to interpret [Code of Civil Procedure section 1021.5](#) as a program *administered locally*. A more logical interpretation is to view the expenses incurred therewith as an "incidental impact" of a general law.

The application of [Code of Civil Procedure section 1021.5](#) is not limited to local agencies and has been applied generally to all residents and entities in the state. The following are cases where private individuals or entities were ordered to pay attorney's fees pursuant to [Code of Civil Procedure section 1021.5](#): *Press v. Lucky Stores, Inc., supra*, 34 Cal.3d 311-private owner of store; *Braude v. Automobile Club of Southern Cal.* (1986) 178 Cal.App.3d 994 [223 Cal.Rptr. 914]-private nonprofit corporation; *Franzblau v. Monardo* (1980) 108 Cal.App.3d 522 [166 Cal.Rptr. 610]-officers of nonprofit hospital.

In *Braude v. Automobile Club of Southern Cal., supra*, 178 Cal.App.3d 994, at page 1011, it was noted that "[p]ractically all of the [[Code of Civil Procedure](#)] [section 1021.5](#) cases involve a public entity as a defendant; however, such fees may be awarded if, as in the instant case, a private party is the only defendant." County argues that since "almost all" of the [Code of Civil Procedure section 1021.5](#) cases involve public entities, [Code of Civil Procedure section 1021.5](#) is a new program directed at local government. We do not feel that whether a statistically greater number of actions is filed against public entities than against private parties is relevant. What is significant is that [Code of Civil Procedure section 1021.5](#) was intended to be used as a tool against *any* individual or entity, public or private.

County next contends that because [Code of Civil](#)

[Procedure section 1021.5](#) expressly prohibits the recovery of an award of attorney's fees to ***350** public agencies, that limitation establishes [Code of Civil Procedure section 1021.5](#) as a new program. County's attempt at syllogism fails. By definition, public agencies are already supposed to be working for the "public good." It would be contrary to the purpose of the *private* attorney general theory to allow a *public* agency to recover such fees. It does not necessarily follow that a *bar* to filing suit under [Code of Civil Procedure section 1021.5](#) demonstrates that [Code of Civil Procedure section 1021.5](#) is a state- mandated new program. If a new program was created at all, and we hold it was not, it results from the public agencies being ordered to *pay* under the private attorney general theory, not from the preclusion of *bringing* such an action.

As discussed previously, private individuals and entities, as well as public agencies, have been ordered to pay fees pursuant to [Code of Civil Procedure section 1021.5](#). That fact is significant in determining whether the fees ordered paid by County were really for "functions peculiar to government." We conclude that [Code of Civil Procedure section 1021.5](#) is not a state-mandated program as interpreted by [article XIII B, section 6](#). Furthermore, [Code of Civil Procedure section 1021.5](#) was enacted to encourage private actions to enforce important public policies. (*Press v. Lucky Stores, Inc.*, *supra*, 34 Cal.3d at pp. 318-319.) In context here, fees were awarded against County in the underlying action which enjoined certain improper practices at Valley Medical Center; in other words, as stated in [Woodland Hills Residents Assn., Inc. v. City Council](#), *supra*, 23 Cal.3d 917 at page 933, to effectuate "fundamental public policies embodied in constitutional or statutory provisions, ..." It would be inimical to the purpose of [Code of Civil Procedure section 1021.5](#) and the intent of [article XIII B, section 6](#) to find a state mandate under those circumstances.

Disposition

The judgment is affirmed. Respondents are awarded costs on appeal.

Best, P. J., and Stone (W. A.), J., concurred. ***351**

Cal.App.5.Dist.,1991.

County of Fresno v. Lehman

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H

LOS ANGELES UNIFIED SCHOOL DISTRICT,
 Plaintiff and Respondent,

v.

THE STATE OF CALIFORNIA et al., Defendants
 and Appellants.

No. B046357.

Court of Appeal, Second District, Division 5,
 California.

Apr. 19, 1991.

SUMMARY

The trial court granted a school district's petition for writ of mandate seeking to set aside a decision of the Board of Control of the State of California denying the district's claim for reimbursement for the financial cost of complying with legislation that created the California Occupational Safety and Health Administration (Cal/OSHA). To comply with Cal/OSHA, the district had expended funds undertaking several safety-related measures. (Superior Court of Los Angeles County, No. C332013, Kurt J. Lewin, Judge.)

The Court of Appeal reversed with directions to deny the petition. It held that as a matter of law no constitutional or statutory provision mandates the reimbursement to local governments of costs incurred complying with Cal/OSHA; thus the district had not established a right to reimbursement. (Opinion by Boren, J., with Turner, P.J., and Ashby, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#), [1c](#)) State of California § 11--
 Reimbursement of State-mandated Cost--School
 District's Expenditures Complying With Cal/OSHA.

As a matter of law, no provision mandates the reimbursement of costs incurred under California Occupational Safety and Health Administration

(Cal/OSHA); thus a school district seeking reimbursement for its expenditures complying with Cal/OSHA had no right to reimbursement. Cal/OSHA was enacted in 1973. By its terms, [Cal. Const., art. XIII B, § 6](#) (reimbursement to local *553 governments for new programs and services), enacted in 1975, allows but does not require reimbursements for funds expended complying with prior legislation. Also, the Legislature enacted reimbursement provisions in 1980 ([Gov. Code, § 17500](#) et seq.), and later repealed [Rev. & Tax. Code, § § 2207.5, 2231](#), also dealing with reimbursement. These legislative acts effectively preclude reimbursement for compliance with legislation enacted before 1975.

[See 9 [Witkin](#), Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(2) Appellate Review § 32--Raising Issue for First Time on Appeal--Legal Question.

The appellate court has discretion to entertain an issue not raised previously where the issue presents a purely legal question involving no disputed facts.

(3) Abatement, Survival, and Revival § 1--
 Abatement--Repeal of Statute.

Where an action is dependent upon a statute that is later repealed, the action cannot be maintained.

[See [Cal.Jur.3d, Actions, § 78](#) et seq.]

COUNSEL

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Henry G. Ullerich, Deputy Attorney General, for Defendants and Appellants.

Ron Apperson and Howard Friedman for Plaintiff and Respondent.

BOREN, J.

The Los Angeles Unified School District (District) filed with the Board of Control of the State of California (Board) a claim in 1980 seeking reimbursement for the financial costs of complying with legislation (Stats. 1973, ch. 993) which created the California Occupational Safety and Health

Administration (Cal/OSHA). The District claimed approximately \$45,000 in reimbursements as a result of Cal/OSHA's regulations, standards and orders, which required the District to modify several school *554 buildings and other facilities by installing or repairing a myriad of safety-related items. Following the Board's denial of the District's claim for reimbursement and the Los Angeles Superior Court's initial denial of the District's petition for a writ of mandate, this Division of the Court of Appeal reversed and remanded the cause on a procedural matter and not on the merits. (*Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686 [245 Cal.Rptr. 140].) Upon remand, the superior court granted the District's petition for a writ of mandamus and commanded the Board to set aside the denial of the District's claim for reimbursement. The Board appeals, and we reverse.

Discussion

(1a) The Board contends that the duty to provide a safe workplace was an obligation of the school districts because of preexisting safety orders and the continuous jurisdiction of the Department of Industrial Relations over school districts. As the Board views the matter, to the extent that the 1973 legislation creating Cal/OSHA required additional costs and duties of all employers, the legislation did not either require a new service to the public or impose unique requirements on local government that do not apply generally to all residents and entities in the state. According to the Board, the Cal/OSHA legislation did not create any new programs or an increased level of services within the meaning of relevant reimbursement provisions and case law addressing reimbursement of state-mandated costs and therefore did not lead to reimbursable expenses.

The reimbursement provisions at issue are [article XIII B, section 6 of the California Constitution](#) [FN1] and former sections 2231 and 2207.5 of the Revenue and Taxation Code. [FN2] We hold that as a matter of law (see *555*Los Angeles Unified School Dist. v. State of California, supra*, 199 Cal.App.3d at p. 689; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 536 [234 Cal.Rptr. 795]), no provision mandates the reimbursement of costs incurred under the Cal/OSHA law, and the District thus has not established a right to reimbursement.

FN1 [Article XIII B, section 6 of the California Constitution](#) provides, in

pertinent part, as follows: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds ... [in several specified situations, including] [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (Adopted Nov. 6, 1979, effective July 1, 1980.)

FN2 The pertinent former provisions of the Revenue and Taxation Code applicable when the District's claim was denied have since been repealed, and the subject matter is now addressed in [Government Code section 17500](#) et seq. (See *Los Angeles Unified School Dist. v. State of California, supra*, 199 Cal.App.3d at p. 689, fn. 2.)

Former Revenue and Taxation Code section 2231, subdivision (a) provided: "The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207. The state shall reimburse each school district only for those 'costs mandated by the state' as defined in [Section 2207.5](#)." (Stats. 1978, ch. 794, § 1.1, p. 2546, repealed by Stats. 1986, ch. 879, § 23, p. 3045.)

Former Revenue and Taxation Code section 2207.5 provided, in pertinent part, that "[c]osts mandated by the state" which "a school district is required to incur" include costs increased by reason of a law enacted "after January 1, 1973," which "mandates a new program or increased level of service of an existing program." (Stats. 1977, ch. 1135, § 5, p. 3646, amended by Stats. 1980, ch. 1256, § 5, p. 4248, repealed by Stats. 1989, ch. 589, § 8.)

The District's petition for writ of mandamus claimed a right to reimbursement, not under [article XIII B, section 6 of the California Constitution](#), but under the Revenue and Taxation Code provisions. On appeal, the District does not address the Revenue and Taxation Code provisions, but only [article XIII B,](#)

[section 6.](#)

(2) The District may urge for the first time on appeal that its claim is dependent upon the [California Constitution article XIII B, section 6](#). The District's claim regarding this constitutional provision can be belatedly raised because it raises a purely legal question involving no disputed facts. (See [Ward v. Taggart \(1959\) 51 Cal.2d 736, 742 \[336 P.2d 534\]](#); [Bayside Timber Co. v. Board of Supervisors \(1971\) 20 Cal.App.3d 1, 4 \[97 Cal.Rptr. 431\]](#).)

(1b) Nonetheless, this constitutional provision does not require reimbursement for expenditures pursuant to a statute enacted as early as 1973, the year Cal/OSHA legislation was enacted. The District ignores the language in the provision itself that "the Legislature may, *but need not*, provide such subvention of funds for the following mandates: ... (c) Legislative mandates enacted *prior to January 1, 1975*, or executive orders or regulations implementing legislation enacted prior to January 1, 1975." ([Cal. Const., art. XIII B, § 6](#), italics added.) Since the Cal/OSHA legislation at issue was enacted in 1973 (Stats. 1973, ch. 993), the Legislature was not required to provide subvention of funds.

The District's abandonment on appeal of its claim to subvention of funds based on the Revenue and Taxation Code provisions is understandable. [Revenue and Taxation Code section 2231](#), the statutory basis for the District's petition alleging a right to reimbursement, was repealed in 1986. *556 (Stats. 1986., ch. 879, § 23, p. 3045.) In [1989, Revenue and Taxation Code section 2207.5](#) was also repealed. (Stats. 1989, ch. 589, § 8.) (3) It is well settled that, as here, when an action is dependent upon a statute which is later repealed, the action cannot be maintained. ([Younger v. Superior Court \(1978\) 21 Cal.3d 102, 109 \[145 Cal.Rptr. 674, 577 P.2d 1014\]](#); see [Governing Board v. Mann \(1977\) 18 Cal.3d 819, 829 \[135 Cal.Rptr. 526, 558 P.2d 11\]](#).)

(1c) Although the Legislature repealed its authorization for subvention of funds for costs mandated by the state by reason of a law enacted after January 1, 1973 (see former Rev. & Tax. Code, § § 2231 & 2207.5), the repealing legislation also added (Stats. 1986, ch. 879) and amended (Stats. 1989, ch. 589) provisions in the [Government Code \(§ 17500 et seq.\)](#) which address the same subject. [Government Code section 17561](#), subdivision (a) provides: "The state shall reimburse each local agency and school district for all 'costs mandated by the state' as defined in Section 17514." (Stats. 1986,

ch. 879, § 6, p. 3041, amended most recently by Stats. 1989, ch. 589, § 1.5 (No. 4 Deering's Adv. Legis. Service, pp. 1828-1829).) [Government Code section 17514](#), enacted in 1984, provides: " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." (Stats. 1984, ch. 1459, § 1, p. 5114.) [FN3]

FN3 We also note that all the costs for which the District seeks reimbursement were incurred in 1978 and 1979 and thus prior to the July 1, 1980, statutory cutoff date. The District's petition has thus also failed to allege sufficient facts to bring its claim not only within the cutoff date of the statute involved, but within the cutoff date for the costs incurred.

As indicated above ([ante, p. 555](#)), the Legislature in 1986 and 1989 repealed provisions which permitted the subvention of funds for costs mandated by the state as to laws enacted after January 1, 1973, and it enacted provisions which permitted reimbursement for costs mandated by the state incurred after July 1, 1980, as a result of a statute enacted on or after January 1, 1975. This legislative chronology reveals that there is no present legislative intent to provide subvention as to pre-1975 statutes. (See [California Mfrs. Assn. v. Public Utilities Com. \(1979\) 24 Cal.3d 836, 844 \[157 Cal.Rptr. 676, 598 P.2d 836\]](#).) [FN4] The Legislature's abolition of the right to *557 subvention as to pre- 1975 statutes, obviating reimbursement for mandated costs relating to the 1973 Cal/OSHA legislation, constituted the lawful abolition of a right prior to final judgment in the present case. As in the present case, "... when a right of action does not exist at common law, but depends solely upon a statute, the repeal of the statute destroys the right unless the right has been reduced to final judgment or unless the repealing statute contains a saving clause protecting the right in a pending litigation." ([Krause v. Rarity \(1930\) 210 Cal. 644, 652 \[293 P. 62, 77 A.L.R. 1327\]](#); see [Southern Service Co., Ltd. v. Los Angeles \(1940\) 15 Cal.2d 1, 11-12 \[97 P.2d 963\]](#).)

FN4 The Board raised for the first time in its reply brief in this appeal that the statutory changes established a legislative intent not to provide subvention as to pre-1975 statutes. At oral argument, the District argued that the Board had waived the issue as to the statutory changes and was barred from belatedly raising it. Generally, an issue must be raised in the trial court to be preserved for appeal. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 117 [179 Cal.Rptr. 351].) However, as we previously discussed when permitting the District to belatedly raise its constitutional claim (*ante*, p. 555), an appellate court has the discretionary power to hear a new issue where no controverted facts are involved and the issue is a question of law. (*California Pools, Inc. v. Pazargad* (1982) 131 Cal.App.3d 601, 604 [182 Cal.Rptr. 568].) Although the question of law regarding the statutory changes was raised by the Board in its reply brief rather than in its opening brief (see *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 641 [178 Cal.Rptr. 167]), the District had an opportunity to respond and did so during oral argument.

The propriety of the Legislature's repeal of the Revenue and Taxation Code provisions which supported a right to reimbursement was recognized, with apparent foresight, in *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394]. "[T]he mandatory provisions of Revenue and Taxation Code section 2231 do not restrict legislative power. The Legislature remains free to amend or repeal section 2231 as it applies to pre-1975 legislative mandates. [Citations.]" (*Id.* at p. 573.) When the Legislature repealed sections 2231 and 2207.5 and left legislation limiting reimbursement for costs mandated by the state to costs incurred "as a result of any statute enacted on or after January 1, 1975" (*Gov. Code, § 17561*, subd. (a)), it effectively precluded reimbursement for costs incurred as a result of the 1973 Cal/OSHA legislation.

As this court recently observed in an unrelated state mandate context, "The legislature [has] consistently limited reimbursement of costs by reference to the effective dates of statutes and executive orders and nothing indicates the state intended recovery of costs

to be open-ended." (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 179 [275 Cal.Rptr. 449].) In view of our conclusion that the Legislature has effectively precluded reimbursement for the District's claimed costs, we need not determine whether the 1973 Cal/OSHA legislation created a new obligation on the part of the District or mandated a new program or increased level of service within the meaning of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202]. *558

Finally, as the Board views the matter, new costs to school districts were proximately caused by specific new safety orders and not by the 1973 Cal/OSHA statute, which merely established state agencies to adopt standards, hear appeals and investigate and penalize for violations. The Board cites other contexts in which it has determined that specific regulations constitute reimbursable mandates. (See, e.g., *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1542 [263 Cal.Rptr. 351] [elevator earthquake safety regulations]; *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 535 [firefighter protective clothing and equipment required by administrative code sections].) The Board thus urges that upon the filing of a specific claim arising from a specific regulation by Cal/OSHA, the Board may receive evidence on the old duties and the new duties and determine the quantum of increased costs, although a hearing involving all safety orders at one time is a practical impossibility.

It appears that the Board, whose functions were transferred to a new Commission on State Mandates (*Gov. Code, § § 17525, 17630*; Stats. 1984, ch. 1459, § 1, pp. 5115-5117; amended by Stats. 1985, ch. 179, § 4, pp. 1111- 1112, eff. July 8, 1985, operative Jan. 1, 1985), seeks judicial permission to entertain claims of whether specific orders and regulations pertaining to Cal/OSHA contain state mandated costs. [FN5] We decline the invitation to rule on such a theoretical issue involving claims not involved in the present case. To the extent that the Board is concerned with the safety orders and regulations mandating the costs incurred in the present case, such orders and regulations cannot arise in a vacuum. Safety orders and regulations must have some specific legislation as a statutory predicate. Even assuming that the District had adequately pleaded specific Cal/OSHA orders and regulations, neither the Board nor the District alleges that any costs claimed were incurred as a result of any post-1975 legislation. There is no indication in the record that

the costs incurred by the District, even if relating to post-1975 safety orders and regulations, were incurred "as a result of" ([Gov. Code, § 17561](#), subd. (a)) anything other than the pre-1975 Cal/OSHA legislation. The District's costs are thus unreimbursable. *559

FN5 When this case was previously before this court and was remanded on a procedural matter, we noted as follows: "As we understand District's position, it contends the trial court erred in refusing to consider the question of law whether [the Cal/OSHA legislation reflected in] Statutes 1973, chapter 993 *itself* comes within the meaning of [section 2207.5](#). We assume District does not contest that portion of the trial court's judgment which holds that District has not adequately pleaded specific *executive orders and regulations* pertaining to Cal OSHA which might contain state mandated costs." ([Los Angeles Unified School Dist. v. State of California, supra, 199 Cal.App.3d at p. 692, fn. 8](#), italics in original.)

Disposition

The judgment is reversed, and the superior court is directed to deny the petition for a writ of mandate. Each party to bear its own costs on appeal.

Turner, P. J., and Ashby, J., concurred. *560

Cal.App.2.Dist.,1991.

Los Angeles Unified School Dist. v. State

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COUNTY OF FRESNO, Plaintiff and Appellant,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents.

No. S015637.

Supreme Court of California

Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under [Cal. Const., art. XIII B, § 6](#) (state must provide subvention of funds to reimburse local governments for costs of state-mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500](#) et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under [Gov. Code, § 17556](#), subd. (d), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that [Gov. Code, § 17556](#), subd. (d), was facially constitutional under [Cal. Const., art. XIII B, § 6](#). It held [art. XIII B](#) was not intended to reach beyond taxation, and [§ 6](#) was included in [art. XIII B](#) in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that [art. XIII B, § 6](#) was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues.

Accordingly, the court held that [Gov. Code, § 17556](#), subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, *483 Panelli, Kennard, JJ., and Best (Hollis G.), J., [FN*] concurring. Separate concurring opinion by Arabian, J.)

FN* Presiding Justice, Court of Appeal,
 Fifth Appellate District, assigned by the
 Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by [Cal. Const., art. XIII B, § 6](#), to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500](#) et seq.), the trial court properly found that [Gov. Code, § 17556](#), subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. [Gov. Code, § 17556](#), subd. (d), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, [Gov. Code, § 17556](#), subd. (d), is facially constitutional under [Cal. Const., art. XIII B, § 6](#).

[See **Cal.Jur.3d (Rev)**, Municipalities, § 361; 9 **Witkin**, Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

COUNSEL

Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. *484

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

MOSK, J.

We granted review in this proceeding to decide whether [section 17556](#), subdivision (d), of the [Government Code \(section 17556\(d\)\)](#) is facially valid under [article XIII B, section 6, of the California Constitution \(article XIII B, section 6\)](#).

[Article XIII B, section 6](#), provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

The Legislature enacted [Government Code sections 17500 through 17630](#) to implement [article XIII B, section 6 \(Gov. Code, § 17500\)](#). It created a "quasi-judicial body" (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to "hear and decide upon [any] claim" by a local government that the local government "is entitled to be reimbursed by the state for costs" as required by [article XIII B, section 6 \(Gov. Code, § 17551](#), subd. (a)). It defined

"costs" as "costs mandated by the state"- "any increased costs" that the local government "is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program" within the meaning of [article XIII B, section 6 \(Gov. Code, § 17514\)](#). Finally, in [section 17556\(d\)](#) it declared that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

For the reasons discussed below, we conclude that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#). *485

I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). ([Health & Saf. Code, § 25500](#) et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called "test" or initial claim with the commission ([Gov. Code, § 17521](#)) seeking reimbursement from the State of California (State) under [article XIII B, section 6](#). After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, [section 17556\(d\)](#) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that [section 17556\(d\)](#) is unconstitutional under [article XIII B, section 6](#). While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the

Act did not constitute a "program" under the rationale of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter alia, that mandate under *Code of Civil Procedure section 1094.5* was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that *section 17556(d)* is constitutional under *article XIII B, section 6*. It did not address the question whether the Act constituted a "program" under *County of Los Angeles*. Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under *County of Los Angeles, supra*, 43 Cal.3d 46. It also held *section 17556(d)* is constitutional under *article XIII B, section 6*. *486

(1) We granted review to decide a single issue, i.e., whether *section 17556(d)* is facially constitutional under *article XIII B, section 6*.

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, *article XIII B* was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra*, 50 Cal.3d at

p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation- specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (*Cal. Const., art. XIII B, § 8*, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id.*, § 2). (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at *p. 446*.) It defines the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes" (*Cal. Const., art. XIII B, § 8*, subd. (b).) It defines "proceeds of taxes" as including "all tax revenues and the proceeds to ... government from," inter alia, "regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service" (*Cal. Const., art. XIII B, § 8*, subd. (c), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but *487 taxes" for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at *p. 451*, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra*, 43 Cal.3d at *p. 61*.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School*

Dist. v. Honig (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context [section 6 of article XIII B](#) requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of [section 17556\(d\)](#) under [article XIII B, section 6](#), can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

The County argues to the contrary. It maintains that [section 17556\(d\)](#) in essence creates a new exception to the reimbursement requirement of ~~*488~~[article XIII B, section 6](#), for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting [section 17556\(d\)](#) the Legislature created a new exception to the reimbursement requirement of [article XIII B, section 6](#). As explained, the Legislature effectively-and properly-construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, [section 17556\(d\)](#) is indeed inconsistent with [article XIII B, section 6](#). Its contention is in substance as follows: the source of [section 17556\(d\)](#) is former Revenue and Taxation Code section

2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into [article XIII B, section 6](#), but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent: "the state may not arbitrarily declare that it is not going to comply with [Section 6](#) ... if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra*, 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [[section 17556\(d\)](#)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program." ~~*489~~

The County appears to be making one or both of the following arguments: (1) the commission applies [section 17556\(d\)](#) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of [section 17556\(d\)](#) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of [section 17556\(d\)](#).

III. Conclusion

For the reasons set forth above, we conclude that [section 17556\(d\)](#) is facially constitutional under

[article XIII B, section 6.](#)

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J.,
and Best (Hollis G.), J., [FN*] concurred.

FN* Presiding Justice, Court of Appeal,
Fifth Appellate District, assigned by the
Chairperson of the Judicial Council.

ARABIAN, J.,

Concurring.

I concur in the determination that [Government Code section 17556](#), subdivision (d) [FN1] ([section 17556\(d\)](#)), does not offend [article XIII B, section 6, of the California Constitution](#) ([article XIII B, section 6](#)). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

FN1 Unless otherwise indicated, all further statutory references are to the Government Code.

[Article XIII B, section 6](#), unequivocally commands that "the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service" except as specified therein. [Article XIII B](#) does not define this reference to "costs." (See [Cal. Const., art. XIII B, § 8](#).) Rather, the Legislature assumed the task of explicating the related concept of "costs mandated by the state" when it created the Commission on State Mandates and enacted procedures intended to implement [article XIII B, section 6](#), more effectively. (See [§ 17500](#) et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving [article XIII B, section 6](#) (§ 17556, subs. (a), (c), & (g); see [§ 17514](#)), while others are strictly of legislative formulation and derive from *490

former Revenue and Taxation Code section 2253.2. (§ 17556, subs. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of [article XIII B, section 6](#), based on the circular and conclusory rationale that "the Legislature effectively- and properly-construed the term 'costs' as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach." (Maj. opn., [ante](#), at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word "except" should not be necessary to construe the result for what it clearly is. In this circumstance, "I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." ([In re Deborah C. \(1981\) 30 Cal.3d 125, 141 \[177 Cal.Rptr. 852, 635 P.2d 446\]](#) (conc. opn. by Mosk, J.).)

Of at least equal importance, [section 17500](#) et seq. constitutes a legislative implementation of [article XIII B, section 6](#). As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of [article XIII B, section 6](#), to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. "[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand." ([Rose v. State of California \(1942\) 19 Cal.2d 713, 723 \[123 P.2d 505\]](#); see also [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46, 58 \[233 Cal.Rptr. 38, 729 P.2d 202\]](#).) To this end, it is a fundamental premise of our form of government that "the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden" ([People v. Coleman \(1854\)](#)

4 Cal. 46, 49.) "Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the *491 Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra*, 37 Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin, supra*, 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, §

3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] ["'fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]'"]; *492*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56; see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill

equipped to take responsibility for any new programs." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure. [FN2] (See *493 *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only "to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service"

FN2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]".])

The self-executing nature of [article XIII B](#) does not alter this analysis. "It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]" (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) " ' "Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." [Citations.]' " (*Id.*, at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not "merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly." (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates no

conflict with the constitutional directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

"[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.' [Citation.]" (*Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) *494

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people. [FN3] Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. *495

FN3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patiucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17

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(Cite as: **53 Cal.3d 482**)

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Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel, supra*, 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside, supra*, 31 Cal.2d 619.

Cal. 1991.

County of Fresno v. State

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FRANCES KINLAW et al., Plaintiffs and
 Appellants,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents.

No. S014349.

Supreme Court of California

Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to [Code Civ. Proc., § 526a](#), against the state, alleging that it had violated [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature ([Gov. Code, § 17500](#) et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under [Cal. Const., art. XIII B, § 6](#), were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.

[Gov. Code, § 17500](#) et seq., creates an administrative forum for resolution of state mandate claims arising under [Cal. Const., art. XIII B, § 6](#), and establishes *327 procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid ([Gov. Code, § 17612](#)). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [Cal. Const., art. XIII B, § 6](#).

(2) State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce-- Standing.

In an action by medically indigent adults and taxpayers seeking to enforce [Cal. Const., art. XIII B, § 6](#), for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy ([Gov. Code, § 17500](#) et seq.) by which affected local agencies could enforce their constitutional right under [art. XIII B, § 6](#) to reimbursement for the cost of state mandates did not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under [art. XIII B, § 6](#); unless the exercise of a constitutional right is unduly restricted, a court must

limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See [Cal.Jur.3d, State of California, § 78](#); 7 [Witkin](#), Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

COUNSEL

Stephen D. Schear, Stephen E. Ronfeldt, Armando M. Menocal III, Lois Salisbury, Laura Schulkind and Kirk McInnis for Plaintiffs and Appellants. *328

Catherine I. Hanson, Astrid G. Meghrihan, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce [section 6 of article XIII B](#) (hereafter, [section 6](#)) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to [Code of Civil Procedure section 526a](#) and as persons affected by the alleged failure of the state to comply with [section 6](#). The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under [section 6](#) are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

[Section 6](#), adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: *329

"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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

A complementary provision, [section 3 of article XIII B](#), provides for a shift from the state to the local agency of a portion of the spending or "appropriation" limit of the state when responsibility for funding an activity is shifted to a local agency:

"The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount."

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time [section 6](#) was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly *330 situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi-Cal program to the counties without adequate reimbursement violated the California Constitution. [FN1]

FN1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce [section 6](#).

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission). [FN2]

FN2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate ([Code Civ. Proc., § 1094.5](#)), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of [section 6](#). Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of [section 6](#). [FN3] *331

FN3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing. An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. ([Gov. Code, § 17612.](#)) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce [section 6](#). All further statutory references are to the Government Code unless otherwise indicated.

III Enforcement of [Article XIII B, Section 6](#)

In 1984, almost five years after the adoption of [article XIII B](#), the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of [section 6](#). ([§ 17500](#).) The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in [section 17500](#):

"The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [Section 6 of Article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*" (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, "State-Mandated Costs," which commences with [section 17500](#), the Legislature created the Commission ([§ 17525](#)), to adjudicate disputes over the existence of a state-mandated program ([§ § 17551, 17557](#)) and to adopt procedures for submission and adjudication of reimbursement claims ([§ 17553](#)). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. ([§ 17525](#).)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ([§ 17554](#)), [FN4] establishes the method of ***332** payment of claims ([§ § 17558, 17561](#)), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates ([§ § 17562, 17600, 17612](#), subd. (a).)

FN4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [§ 17521](#).) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. ([§ 17555](#).)

Pursuant to procedures which the Commission was authorized to establish ([§ 17553](#)), local agencies [FN5] and school districts [FN6] are to file claims for reimbursement of state-mandated costs with the Commission ([§ § 17551, 17560](#)), and reimbursement is to be provided only through this statutory procedure. ([§ § 17550, 17552](#).)

FN5 " 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." ([§ 17518](#).)

FN6 " 'School district' means any school district, community college district, or county superintendent of schools." ([§ 17519](#).)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a "test claim." ([§ 17521](#).) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. ([§ 17553](#).) Any interested organization or individual may participate in the hearing. ([§ 17555](#).)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting "parameters and guidelines" for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to [Code of Civil Procedure section 1094.5](#). (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations *333 bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subs. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a "local government claims bill." If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [section 6](#) lies in these procedures. The statutes create an administrative

forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in [section 17500](#): "It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIII B of the California Constitution](#) and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ..." And section 17550 states: "Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter."

Finally, section 17552 provides: "This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by [Section 6 of Article XIII B of the California Constitution](#)." (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [section 6](#). *334

IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under [section 6](#) to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge. (*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]; *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]; *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that

plaintiffs have a remedy for enforcement of [section 6](#) independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. [Section 6](#) provides that the "state shall provide a subvention of funds *to reimburse ... local governments*" (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement [section 6](#). That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under [section 6](#). Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce [section 6](#) as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost *335 of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind. Nothing in [article XIII B](#) or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to [section 6](#), providing: "Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose."

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a

reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under [section 6](#). That test-claim statute expressly provides that not only the claimant, but also "any other interested organization or individual may participate" in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must "provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person." (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive. [FN7]

FN7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of [section 6](#) before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because [section 6](#) creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

The alternative relief plaintiffs seek-reinstatement to Medi-Cal pending further action by the state-is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists *336 and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.) [FN8]

FN8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000 and 17001](#), and by judicial action. (See, e.g., *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard. [FN9]

FN9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the *337 Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by [article XIII B, section 6](#) of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to

compute its spending limit as if it fully financed the entire program. The result is exactly what [article XIII B](#) was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs-citizens, taxpayers, and persons in need of medical care-allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating [article XIII B](#). Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned *338 itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds. [FN1]

FN1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000](#) and [17001](#), and by judicial action." (Maj. opn., [ante](#), p. 336, fn. 8) The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about \$40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since [article XIII B](#) became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than \$20 million per year. The county has inadequate funds to discharge its new obligation for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles;

the crisis cannot be overstated" "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need" "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people"

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of [article XIII B](#), and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of [article XIII B](#), which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda *339 County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. *Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with [article XIII B](#).*

Plaintiffs first claim standing as taxpayers under [Code of Civil Procedure section 526a](#), which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.

..." As in [Common Cause v. Board of Supervisors \(1989\) 49 Cal.3d 432, 439 \[261 Cal.Rptr. 574, 777 P.2d 610\]](#), however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under [Code of Civil Procedure section 526a](#), because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates [article XIII B](#). A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See [California Assn. of Psychology Providers v. Rank \(1990\) 51 Cal.3d 1, 9 \[270 Cal.Rptr. 796, 793 P.2d 2\]](#), which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under [article XIII B](#). The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce [section 6 of article XIII B](#).

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty. [FN2] Such an action may be brought by any person "beneficially interested" in the issuance of the writ. ([Code Civ. Proc., § 1086](#).) In [*340Carsten v. Psychology Examining Com. \(1980\) 27 Cal.3d 793, 796 \[166 Cal.Rptr. 844, 614 P.2d 276\]](#), we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, [Administrative Law Treatise \(1958\) p. 291](#).) Cases applying this standard include [Stocks v. City of Irvine \(1981\) 114 Cal.App.3d 520 \[170 Cal.Rptr. 724\]](#), which held that low-income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; [Taschner v. City Council, supra, 31 Cal.App.3d 48](#), which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and [Felt v. Waughop \(1924\) 193](#)

[Cal. 498 \[225 P. 862\]](#), which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: [Carsten v. Psychology Examining Com., supra, 27 Cal.3d 793](#), held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; [Parker v. Bowron \(1953\) 40 Cal.2d 344 \[254 P.2d 6\]](#) held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and [Dunbar v. Governing Board \(1969\) 275 Cal.App.2d 14 \[79 Cal.Rptr. 662\]](#) held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

FN2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In [Taschner v. City Council \(1973\) 31 Cal.App.3d 48, 56 \[107 Cal.Rptr. 214\]](#) (overruled on other grounds in [Associated Home Builders etc., Inc. v. City of Livermore \(1976\) 18 Cal.3d 582, 596 \[135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038\]](#)), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend." In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See [Residents of Beverly Glen, Inc. v. City of Los Angeles \(1973\) 34 Cal.App.3d 117, 127- 128 \[109 Cal.Rptr. 724\]](#).)

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs,

except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, *341 plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under [Government Code section 17563](#) "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention. [FN3]

FN3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

This argument would be sound if the county were already meeting its obligations to MIA's under [Welfare and Institutions Code section 17000](#). If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its

duty, mandated by [Welfare and Institutions Code section 17000](#), to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under [section 17000 of the Welfare and Institutions Code](#). If it refused, an action in mandamus would lie to compel performance. (See [Mooney v. Pickett \(1971\) 4 Cal.3d 669 \[94 Cal.Rptr. 279, 483 P.2d 1231\]](#).) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with [article XIII B](#) ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right *342 and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." ([Bd. of Soc. Welfare v. County of L. A. \(1945\) 27 Cal.2d 98, 100-101 \[162 P.2d 627\]](#).) We explained in [Green v. Obledo \(1981\) 29 Cal.3d 126, 144 \[172 Cal.Rptr. 206, 624 P.2d 256\]](#), that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

[Green v. Obledo](#) presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that "[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety." ([29 Cal.3d at p. 145.](#))

We again invoked the exception to the requirement for a beneficial interest in [Common Cause v. Board](#)

of Supervisors, supra, 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra*, 29 Cal.3d 126, 144, and concluded that "[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication." (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. *Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.*

Four years after the enactment of *article XIII B*, the Legislature enacted *Government Code sections 17500 through 17630* to implement *article XIII B, section 6*. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to "hear and decide upon [any] claim" by a local government that it "is entitled to be reimbursed by the state" for costs under *article XIII B, (Gov. Code, § 17551, *343 subd. (a).)* Its decisions are subject to review by an action for administrative mandamus in the superior court. (See *Gov. Code, § 17559.*)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of *article XIII B*, and since that remedy is expressly limited to claims by local agencies or school districts (*Gov. Code, § 17552*), plaintiffs lack standing to enforce the constitutional provision. [FN4] I disagree, for two reasons.

FN4 The majority emphasizes the statement of purpose of *Government Code section 17500*: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state- mandated local programs has not provided for the effective determination of the state's responsibilities under *section 6 of article XIII B of the California Constitution*. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing

reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state- mandated local programs." The "existing system" to which *Government Code section 17500* referred was the Property Tax Relief Act of 1972 (*Rev. & Tax. Code, § § 2201- 2327*), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

First, *Government Code section 17552* expressly addressed the question of exclusivity of remedy, and provided that "[t]his chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by *Section 6 of Article XIII B of the California Constitution*." (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in *Government Code section 17555* it provided that "any other interested organization or individual may participate" in the commission hearing. Under these circumstances the Legislature's choice of words-"the sole and exclusive procedure by which a local agency or school district may claim reimbursement"-limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*-"the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra*, 49 Cal.3d 432. Here defendants contend that the counties' right of action under *Government Code sections 17551-17552* impliedly excludes *344 any citizen's remedy; in *Common Cause* defendants claimed the Attorney

General's right of action under [Elections Code section 304](#) impliedly excluded any citizen's remedy. We replied that "the plain language of [section 304](#) contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations]." (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of [Government Code sections 17551-17552](#) contain no limitation on the right of private citizens, and to infer such a right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in [Rosado v. Wyman \(1970\) 397 U.S. 397 \[25 L.Ed.2d 442, 90 S.Ct. 1207\]](#). In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that "[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program." (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, [article XIII B](#) was enacted to protect taxpayers, not governments. [Sections 1 and 2 of article XIII B](#) establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. [Section 6 of article XIII B](#) prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce [article XIII B](#), and the taxpayer-citizen can appear only if a government has

first instituted proceedings, is inconsistent with the ethos that led to [article XIII B](#). The drafters of [article XIII B](#) and the voters who enacted it would not accept that the state Legislature-the principal body regulated by the article-could establish a procedure [*345](#) under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce [article XIII B](#). An example is the Brown-Presley Trial Court Funding Act ([Gov. Code, § 77000](#) et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation. [FN5] The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of [article XIII B](#).

FN5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing

after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)

"As used in this chapter, 'state-mandated local program' means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution, or Section 17561 of the Government Code, or both." (Gov. Code, § 77005, italics added.)

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to *346 determine the amount of the mandate-which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation-in this case, the medically indigent-and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see McKinny v. Board of Trustees (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent

decision in Dix v. Superior Court, supra, 53 Cal.3d 442 (hereafter *Dix*). In *Dix*, the victim of a crime sought to challenge the trial court's decision to recall a sentence under Penal Code section 1170. We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning the trial court's authority to recall a sentence under Penal Code section 1170, subdivision (d). We explained that the sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" (53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the decision of a Court of Appeal in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues-standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix*. The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., ante, p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. *347

The majority, however, notes that various state officials-the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research-did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., ante, p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to

participate, would be here merely as amici curiae.
[FN6]

FN6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix*. Judges rarely recall sentencing under [Penal Code section 1170](#), subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate [article XIII B](#). The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not

plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. Conclusion as to standing.

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude *348 that plaintiffs have standing both as persons "beneficially interested" under [Code of Civil Procedure section 1086](#) and under the doctrine of *Green v. Obledo, supra*, 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under [article XIII B](#). The remedy given local agencies and school districts by [Government Code sections 17500- 17630](#) is, as [Government Code section 17552](#) states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. State funding of care for MIA's.

[Welfare and Institutions Code section 17000](#) requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources. [FN7] From 1971 until 1982, and thus at the time [article XIII B](#) became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully met through other sources, the counties had no duty under [Welfare and Institutions Code section 17000](#) to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time [article XIII B](#) became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when [article XIII B](#) became effective. The state funded all such needs of MIA's.

FN7 [Welfare and Institutions Code section 17000](#) provides that "[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state

hospitals or other state or private institutions."

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was *349 initially relatively constant, generally more than \$400 million per year. By 1990, however, state funding had decreased to less than \$250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its [article XIII B](#) "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About \$1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. The function of [article XIII B](#).

Our recent decision in [County of Fresno v. State of California \(1991\) 53 Cal.3d 482, 486-487 \[280 Cal.Rptr. 92, 808 P.2d 235\]](#) (hereafter *County of Fresno*), explained the function of [article XIII B](#) and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' ([Amador Valley Joint Union High Sch. Dist. v. State Bd. of](#)

[Equalization \(1978\) 22 Cal.3d 208, 231-232 \[149 Cal.Rptr. 239, 583 P.2d 1281\].](#)) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. ([City of Sacramento v. State of California \(1990\) 50 Cal.3d 51, 59, fn. 1 \[266 Cal.Rptr. 139, 785 P.2d 522\] \(City of Sacramento\).](#))

"At the November 6, 1979, Special Statewide Election, [article XIII B](#) was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' ([City of Sacramento, supra, 50 Cal.3d at p. 59, fn. 1.](#))

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See [County of Placer v. Corin \(1980\) 113 Cal.App.3d 443, 446 \[170 Cal.Rptr. 232\]](#), quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument *350 in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments ([Cal. Const., art. XIII B, § 8](#), subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.*, [§ 2](#)). [FN[8]] (See [County of Placer v. Corin, supra, 113 Cal.App.3d at p. 446.](#)) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes' ([Cal. Const., art. XIII B, § 8](#), subd. (b).)" ([County of Fresno, supra, 53 Cal.3d at p. 486.](#))

FN8] [Article XIII B, section 1](#) provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."

Under [section 3 of article XIII B](#) the state may transfer financial responsibility for a program to a

county if the state and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount. [FN9] Absent such an agreement, however, [section 6 of article XIII B](#) generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of [article XIII B](#). It does so by requiring that "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 cost of such program or increased level of service" [FN10]

FN9 [Section 3 of article XIII B](#) reads in relevant part: "The appropriations limit for any fiscal year ... shall be adjusted as follows:

"(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ..."

FN10 [Section 6 of article XIII B](#) further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.

"[Section 6](#) was included in [article XIII B](#) in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See [County of Los Angeles v. State of California](#) (1987)] 43 Cal.3d 46, 61 [233 Cal.Rptr.

[38, 729 P.2d 2021.](#)) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see [Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax *351 revenues of local governments from state mandates that would require expenditure of such revenues." ([County of Fresno, supra](#), 53 Cal.3d at p. 487.)

C. Applicability of [article XIII B](#) to health care for MIA's.

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of [section 6 of article XIII B](#). Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when [article XIII B](#) took effect. The purpose of [article XIII B](#) supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and [article XIII B](#) are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. [Article XIII B](#), enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not county financing for these programs. [Article XIII B](#) further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that [article XIII B](#) was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under [article XIII B](#), both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when [article XIII B](#) was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional

moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of [article XIII B](#).

Our decisions interpreting [article XIII B](#) demonstrate that the state's subvention requirement under [section 6](#) is not vitiated simply because the *352 "program" existed before the effective date of [article XIII B](#). The alternate phrase of [section 6 of article XIII B](#), "higher level of service[.]" ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.'* " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

[Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830](#), presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when [Education Code section 59300](#) (hereafter [section 59300](#)), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under [section 6 of article XIII B](#). The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by [section 59300](#) imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that [section 59300](#) called for only an "adjustment of costs" of educating the severely handicapped, and that *"a shift in the funding of an existing program is not a new program or a higher level of service"* within the meaning of [article XIII B](#).

([Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at p. 834](#), italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying [section 6 of article XIII B](#). That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing *353 power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control [FN[11]] of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate [section 6 of article XIII B](#) because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*" ([Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at pp. 835- 836](#), fn. omitted, italics added.)

FN11] The state notes that, in contrast to the program at issue in *Lucia Mar*, it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar*, while appropriate to the facts of that case, was not intended to establish a rule limiting [article XIII B, section 6](#), to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830: "[B]ecause [section 59300](#) shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—*an obligation the school districts did not have at the time [article XIII B](#) was adopted*—it calls for plaintiffs to support a 'new program' within the meaning of [section 6](#)." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of [*354 article XIII B](#). The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily" [FN12] suspended when [article XIII B](#) became effective. I fail to see the distinction between a case-*Lucia Mar*-in which no existing statute as of 1979 imposed an obligation on the local government and one-this case-in which the statute existing in 1979 imposed no obligation on local government.

FN12 The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time [article XIII B](#) was enacted, the voters did not know which programs would be temporary and which permanent.

The state's argument misses the salient point. As I have explained, the application of [section 6 of article XIII B](#) does not depend upon when the program was created, but upon who had the burden of funding it when [article XIII B](#) went into effect. Our conclusion in *Lucia Mar* that the educational program there in issue was a "new" program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time [article XIII B](#) became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal. [FN13] Both are correct, but irrelevant to this case. [FN14] The county's obligation to MIA's is defined by [Welfare and Institutions Code section 17000](#), not by the former Medi-Cal program. [FN15] If the [*355](#) state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

FN13 It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905].)

FN14 Certain language in *Madera Community Hospital v. County of Madera, supra*, 155 Cal.App.3d 136, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) Welfare and Institutions Code section 17000 by its terms, however, requires the county to

provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

FN15 The county's right to subvention funds under [article XIII B](#) arises because its duty to care for MIA's is a state- mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program " 'mandated' " by the state; i.e., that Alameda County has any option other than to pay these costs. ([Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at pp. 836-837.](#))

The state's arguments are also undercut by the fact that it continues to use the approximately \$1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to [sections 1 and 3 of article XIII B](#). In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of [article XIII B](#) which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce [article XIII B](#) both to those persons whom it was designed to protect-the citizens and taxpayers-and to those harmed by its violation-the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it

permits the state to continue to violate [article XIII B](#) and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. *356

Cal. 1991.

Kinlaw v. State

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THOMAS WILLIAM HAYES, as Director, etc.,
 Plaintiff and Respondent,
 v.
 COMMISSION ON STATE MANDATES,
 Defendant, Cross-defendant, and Respondent; DALE
 S. HOLMES, as Superintendent, etc., Real Party in
 Interest, Cross-complainant
 and Appellant; WILLIAM CIRONE, as
 Superintendent, etc., Real Party in Interest
 and Respondent; STATE OF CALIFORNIA et al.,
 Cross-defendants and Respondents.

No. C009519.

Court of Appeal, Third District, California.

Dec 30, 1992.

SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. The court held that to the extent the state

implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under [Cal. Const., art. XIII B, § 6](#). Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal *1565 mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs:Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

[See [Cal.Jur.3d, State of California, § 78](#); 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § § 123, 124.]

(2) Schools § 4--School Districts--Relationship to State.

A school district's relationship to the state is different from that of local governmental entities such as

cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a *1566 proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

(3) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Federally Mandated Costs.

Pursuant to [Rev. & Tax. Code, § 2271](#) (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

(4) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Costs Incurred Before Effective Date of Constitutional Provision.

Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

(5) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Federal Rehabilitation Act--Obligations Imposed on Districts.

Section 504 of the federal Rehabilitation Act of 1973 ([29 U.S.C. § 794](#)) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to

guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

(6) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Education of the Handicapped Act.

The *1567 federal Education of the Handicapped Act ([20 U.S.C. § 1401](#) et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to establish a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

(7) Civil Rights § 6--Education--Handicapped--Scope of Federal Statute.

Congress intended the Education of the Handicapped Act ([20 U.S.C. § 1401](#) et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. § 794](#)). Accordingly, where it is applicable, the act supersedes claims under the Civil Rights Act ([42 U.S.C. § 1983](#)) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

(8a, 8b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education:Schools § 4--

School Districts; Financing; Funds--Special Education Costs--Reimbursement by State.

The 1975 amendments to the federal Education of the Handicapped Act ([20 U.S.C. § 1401](#) et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention under [Cal. Const., art. XIII B, § 6](#). Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those *1568 costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

(9) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs.

The constitutional subvention provision ([Cal. Const., art. XIII B, § 6](#)) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

(10) Statutes § 28--Construction--Language--Consistency of Meaning Throughout Statute.

As a general rule and unless the context clearly

requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

(11) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs--Subvention.

Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or *1569 taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education--Applicable Criteria in Determining Whether Subvention Required.

In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits. The board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act ([20 U.S.C. § 1401](#) et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme

Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

(13) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--Opinion Elucidating Existing Law.

In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

COUNSEL

Biddle & Hamilton, W. Craig Biddle, Christian M. Keiner and F. Richard Ruderman for Real Party in Interest, Cross-complainant and Appellant. *1570

Breon, O'Donnell, Miller, Brown & Dannis and Emi R. Uyehara as Amici Curiae on behalf of Real Party in Interest, Cross-complainant and Appellant.

No appearance for Real Party in Interest and Respondent.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian and Marsha A. Bedwell, Deputy Attorneys General, and Daniel G. Stone for Plaintiff and Respondent.

Gary D. Hori for Defendant, Cross-defendant and Respondent.

Richard J. Chivaro and Patricia A. Cruz for Cross-defendants and Respondents.

SPARKS, Acting P. J.

This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools for reimbursement for mandated special education programs. [Section 6 of article XIII B of the California Constitution](#) directs, with exceptions not

relevant here, that "[w]henver 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 program or increased level of service, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under [section 6 of article XIII B of the California Constitution](#) and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate ([Code Civ. Proc., § 1094.5](#)), directing the Commission on State Mandates (the successor to the Board of *1571 Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in [City of Sacramento v. State of California \(1990\) 50 Cal.3d 51 \[266 Cal.Rptr. 139, 785 P.2d 522\]](#); and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate ([Code Civ. Proc., § 1085](#)), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

I. The Parties

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the

Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. ([Gov. Code, § 17525.](#)) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. ([Gov. Code, § 17630.](#)) The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

The Santa Barbara County Superintendent of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and, although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. *1572 Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross-defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State Treasury upon a lawful appropriation. ([Cal. Const., art. XVI, § 7.](#)) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

II. *Factual and Procedural Background*

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In [County of Contra Costa v. State of California \(1986\) 177 Cal.App.3d 62 \[222 Cal.Rptr. 750\], at pages 71 and 72.](#) we described these procedures as follows (with footnotes deleted): "[Section 2250 \[Revenue & Taxation Code\]](#) and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. ([§ 2250.](#)) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to [Code of Civil Procedure section 1094.5](#) to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.) *1573

"At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate

from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

"Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. ([Gov. Code, § 17525.](#)) 'Costs mandated by the state' are defined as 'any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which *1574 mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution.](#)' ([Gov. Code, § 17514.](#)) The procedures before the Commission are similar to those which were followed before the

Board of Control. ([Gov. Code, § 17500](#) et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. ([Gov. Code, § 17630](#); [[Rev. & Tax. Code.](#)] § 2239.)"

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the "mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child." Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. § 794](#)). [FN1] Santa Barbara's initial claim was for \$10,500 in state-mandated costs for the 1979-1980 fiscal year.

FN1 [Section 794 of title 29 of the United States Code](#) will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. ([Pub.L. No. 93-112, tit. V, § 504](#) (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. ([Pub.L. No. 95-602, tit. I, § § 119, 122\(d\)\(2\)](#) (Nov. 6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; [Pub.L. No. 99- 506, tit. I, § 103\(d\)\(2\)\(B\), tit. X, § 1002\(e\)\(4\)](#) (Oct. 21, 1986) 100 Stat. 1810, 1844; [Pub.L. No. 100-259, § 4](#) (Mar. 22, 1988) 102 Stat. 29; [Pub.L. No. 100-630, tit. II, § 206\(d\)](#) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to [title 29, United States Code, section 794](#).

During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of \$520,000 for the cost of these services during the 1979- 1980 fiscal year. *1575

Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal [Public Law No. 94-142](#), which amended the Education of the Handicapped Act. ([20 U.S.C. § 1401](#) et seq.) [FN2]

FN2 The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. ([Pub.L. No. 94-142](#) (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. ([Pub.L. No. 101-476, tit. IX, § 901\(b\)\(21\)](#) (Oct. 30, 1990) 104 Stat. 1143; [Pub.L. No. 101-476, tit. IX, § 901b](#); [Pub.L. No. 102-119, § 25\(b\)](#) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of \$474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was [Education Code section 56760](#), a part of the state special education funding formula which, according to Riverside, "mandates a 10% cap on ratio of students served by special education and within that 10% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already "locked into" providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae. [FN3]

FN3 The 1980 legislation required that a local agency adopt an annual budget plan for special education services. ([Ed. Code, § 56200](#).) [Education Code section 56760](#) provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. ([Ed. Code, § § 56760, 56761](#).) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. ([Ed. Code, § 56195](#) et seq.) The transitional provisions included a guarantee of state funding for 1980- 1981 at prior student levels with an inflationary adjustment of 9 percent. ([Ed. Code, § 56195.8](#).) The record indicates that Riverside applied for a waiver of the requirements of [Education Code section 56760](#), but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under [Education Code section 56195.8](#). In light of the current posture of this appeal we

need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.

The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of *1576 Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of \$2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of \$7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985-1986 fiscal years failed to

pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.)) A separate bill which would have appropriated funds to reimburse Riverside *1577 for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 (1987-1988 Reg. Sess.))

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in City of Sacramento v. State of California, supra, 50 Cal.3d 51*, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258]*. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates to set aside the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra, 50 Cal.3d 51*, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

III. Principles of Subvention

(1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (*County of Los Angeles v. State of California (1987) 43 Cal.3d*

[46, 56 \[233 Cal.Rptr. 38, 729 P.2d 202\].](#)) This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by *1578 state law to provide to its residents. (*City of Sacramento v. State of California, supra, 50 Cal.3d at p. 70.*) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (*City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 188.*) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented the state from imposing the cost of new programs or higher levels of service upon local governments. (*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.) [FN4] The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

FN4 In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the

purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (*Gov. Code, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.*)

(2)(See **fn. 5.**) Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs. [FN5] (Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were *1579 undergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) [5 Cal.3d 584 \[96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187\]](#). At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.) In *Serrano*, the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.) A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano*. (Stats. 1972, ch. 1406, § § 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest* (1976) [18 Cal.3d 728, 736- 737 \[135 Cal.Rptr. 345, 557 P.2d 929\]](#).) [FN6]

FN5 A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California Teachers Assn. v. Huff* (1992) [5 Cal.App.4th 1513, 1524 \[7 Cal.Rptr.2d 699\]](#).) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and

comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523-1524.)

FN6 After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34 48-56, 61-62 [36 L.Ed.2d 16, 42-43, 51-56, 59- 60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (*Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 761-766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see *Ed. Code*, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff*, *supra*, 5 Cal.App.4th 1513.)

The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) [Revenue and Taxation Code section 2231](#), subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. ([Rev. & Tax. Code, § 2231](#), subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 *1580 and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (*Rev. & Tax. Code*, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

In the 1973 legislation, [Revenue and Taxation Code section 2271](#) was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." (3) In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. ([Cal. Const., art. XIII B, § 8](#), subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. ([Cal. Const., art. XIII B, § 1.](#)) [FN7] The appropriations subject to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services

more costly." ([Cal. Const., art. XIII B, § 9](#), subd. (b).)

FN7 As it was originally enacted, [article XIII B](#) required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, [article XIII B](#) was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See [Cal. Const., art. XVI, § 8.5](#); [California Teachers Assn. v. Huff, supra](#), 5 Cal.App.4th 1513.)

Like its statutory predecessor, the constitutional initiative measure includes a provision designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." ([Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830, 835-836 [244 Cal.Rptr. 677, 750 P.2d 318].) [Section 6 of article XIII B of the state Constitution](#) provides: "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the *1581 State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Although article XIII B of the state Constitution requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. ([Cal. Const., art. XIII B, § 10.](#)) (4) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. ([City of Sacramento v. State of California, supra](#), 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1,

1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. ([Cal. Const., art. XIII B, § 6.](#)) Accordingly, it has been held that state subvention is not required when the federal government imposes new costs on local governments. ([City of Sacramento v. State of California, supra](#), 156 Cal.App.3d at p. 188; see also [Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521, 543 [234 Cal.Rptr. 795].) In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion, [FN8] the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73.) However, "certain regulatory standards imposed by the federal government *1582 under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id.* at pp. 73-74.) The test for determining whether there is a federal mandate is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." (*Id.* at p. 76.) The court went on to say: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Ibid.*)

FN8 The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this

court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's [City of Sacramento decision](#). (See 50 Cal.3d at p. 60.)

IV. Special Education

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See [Smith v. Robinson \(1984\) 468 U.S. 992, 1010 \[82 L.Ed.2d 746, 763, 104 S.Ct. 3457\]](#).) Two federal district court cases, *Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa.* (E.D.Pa. 1972) [343 F.Supp. 279](#) (see also *Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa.* (E.D.Pa. 1971) [334 F.Supp. 1257](#)), and *Mills v. Board of Education of District of Columbia* (D.D.C. 1972) [348 F.Supp. 866](#), were the most prominent of these judicial decisions. (See [Hendrick Hudson Dist. Bd. of Ed. v. Rowley \(1982\) 458 U.S. 176, 180, fn. 2 \[73 L.Ed.2d 690, 695, 102 S.Ct. 3034\]](#).)

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. ([Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa., supra, 343 F.Supp. at p. 282.](#)) The matter was assigned to a three-judge panel which heard evidence on the plaintiffs' due process and equal protection claims. ([Id. at p. 285.](#)) The parties then agreed to resolve the litigation by means of a consent *1583 judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to

reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with placement decisions. ([Id. at pp. 303-306.](#)) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." ([Id. at p. 285](#), italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." ([Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa., supra, 343 F.Supp. at p. 291.](#)) The court said that it was convinced the due process and equal protection claims were colorable. ([Id. at pp. 295-296.](#))

In the *Mills* case, an action was brought on behalf of a number of school-age children with exceptional needs who were excluded from the Washington, D.C., public school system. ([Mills v. Board of Education of District of Columbia, supra, 348 F.Supp. at p. 868.](#)) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. ([Id. at pp. 874-875.](#)) The court said: "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." ([Id. at p. 876.](#))

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified

handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, *1584 shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 U.S.C. § 794, Pub.L. No. 93- 112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) [FN9] Since federal assistance to education is pervasive (see, e.g., Ed. Code, § § 12000-12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

FN9 In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624,635-636 [79 L.Ed.2d 568, 577- 578, 104 S.Ct. 1248].)

The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 by educational agencies. [FN10] The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall*

(S.D.Tex. 1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free *1585 public education for the handicapped child." (*Doe v. Marshall, supra*, 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra*, 446 F.Supp. at p. 1323.)

FN10 HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)

(5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra*, 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a

prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively and substantially. (442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990-991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672, 105 S.Ct. 712].)

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest*, supra, 18 Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate *1586 the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with

congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate*, supra, 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis*, supra, 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." (*Alexander v. Choate*, supra, 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. (*N. M. Ass'n for Retarded Citizens v. State of N. M.*, supra, 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].) [FN11] We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action. *1587

FN11 Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, supra, eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was

resolved, favorably for the child, under that act.

In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient states to adopt a goal of providing full educational opportunities to all handicapped children. (*Ibid.* [73 L.Ed.2d at pp. 695-696].) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. (*Ibid.* [73 L.Ed.2d at p. 696].)

Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) (6) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson*, *supra*, 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme Court has noted that Congress intended the act to establish " 'a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.' " (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.) [FN12]

FN12 Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local *1588 educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;" and "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).) [FN13]

FN13 That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223 at pages 231 and 232 [105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to

meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at pp. 73-74; *City of Sacramento v. State of California*, *supra*, 156 Cal.App.3d at p. 195.) As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. § § 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979-1980, the base year for Santa Barbara's claim, California received \$71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received \$79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. (7) Congress intended the act to serve as a means by which state and *1589 local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].) [FN14]

FN14 In *Smith v. Robinson*, *supra*, the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of

the Rehabilitation Act of 1973 or [section 1983](#) of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. ([20 U.S.C. § 1415\(e\)\(4\)\(B\)](#).)

As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson*, *supra*, 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act ([42 U.S.C. § 1983](#)), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson*, *supra*, 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, *supra*, all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p. 698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. *1590

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) [495 F.Supp. 391](#), a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting

constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.) [FN15] The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. ([495 F.Supp. at pp. 398-399.](#))

FN15 The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)

After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra*, 678 F.2d 847.) The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (678 F.2d at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (678 F.2d at p. 854.) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted

New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped *1591 children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (*Ibid.*) Litigation was becoming so prevalent that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.) [FN16]

FN16 Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an over tendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan

for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals*, supra, 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting [Ed. Code, § 7001](#).) In 1977 the Legislature acted to further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting [Ed. Code, § 56301](#).) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting [Ed. Code, § 56000](#).)

As this history demonstrates, in determining whether to adopt the requirements of the Education of the Handicapped Act as amended in 1975, our *1592 Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

(8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in [City of Sacramento v. State of California](#), supra, 50 Cal.3d at page 76. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

V. Subvention for Special Education

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In [City of Sacramento v. State of California](#), supra, 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general *1593 application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

(9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention

when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. ([Cal. Const., art. XIII B, § 6.](#)) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former § § 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See [City of Sacramento v. State of California, supra](#), 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. ([City of Sacramento v. State of California, supra](#), 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which *1594 is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. ([20 U.S.C. § § 1412, 1413.](#)) (8b) In short, even though the state had no real choice in deciding whether to comply with the

federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. ([Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. ([20 U.S.C. § 1415\(c\), \(d\).](#)) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the *1595 extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in [City of Sacramento v. State of California, supra](#), 156 Cal.App.3d 182, and concluded that the Education of the Handicapped Act

is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed *on local districts* by federal mandate or by the state's voluntary choice in its implementation of the federal program.

VI. *Riverside's Objections*

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different with respect to state subvention than with respect to taxing and spending limitations. (10) As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [285 Cal.Rptr. 777].) (11) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in *1596 the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

(12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37 [196 Cal.Rptr. 704, 672 P.2d 110].) (13) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (*Ibid.* See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953- 954 [148 Cal.Rptr. 379, 582 P.2d 970]; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680-681 [312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by state choice in the implementation of the federal program. The issues

were not addressed by the parties or the Board of Control in this light. The *1597 Commission on State Mandates is the entity with the responsibility for considering the issues in the first instance and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation of powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See [*Carmel Valley Fire Protection Dist. v. State of California, supra*](#), 190 Cal.App.3d at pp. 538- 541.)

Disposition

The judgment is affirmed.

Davis, J., and Scotland, J., concurred.

The petition of plaintiff and respondent for review by the Supreme Court was denied April 1, 1993. Lucas, C.J., Kennard, J., and Arabian, J., were of the opinion that the petition should be granted. *1598

Cal.App.3.Dist.,1992.

Hayes v. Commission on State Mandates

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32 Cal.App.4th 805, 38 Cal.Rptr.2d 304
 (Cite as: 32 Cal.App.4th 805)

▶ COUNTY OF LOS ANGELES, Plaintiff and Appellant,
 v.
 COMMISSION ON STATE MANDATES, Defendant and Respondent; GRAY DAVIS, as Controller, etc., et al., Real Parties in Interest and Respondents.
No. B080938.

Court of Appeal, Second District, California.
 Feb 24, 1995.

SUMMARY

A county sought a writ of mandate to compel the Commission on State Mandates to vacate its determination that [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases or cases under [Pen. Code, § 190.05](#), subd. (a)), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to [Cal. Const., art. XIII B, § 6](#). The trial court denied the writ. (Superior Court of Los Angeles County, No. BS020682, Diane Wayne, Judge.)

The Court of Appeal affirmed. The court held that the requirements of [Pen. Code, § 987.9](#), are not state mandated, since, even in the absence of the statute, counties would be responsible for providing ancillary services to indigent defendants under the federal constitutional guaranties of right to counsel and due process ([U.S. Const., 6th](#) and [14th](#) Amendments.). And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under [Cal. Const., art. XIII B, § 6](#). If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under [Pen. Code, § 987.9](#), are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute. Moreover, the court held that the Legislature's initial appropriation to reimburse the counties for the costs of [Pen. Code, § 987.9](#), was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the commission err in finding that the statute is not a state mandate, despite the

Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. Similarly, the Legislature's initial determination to enact an appropriation did not obligate it to enact an appropriation every year in perpetuity to reimburse the counties, nor did this determination prevent future legislatures from refusing to appropriate moneys for [Pen. Code, § 987.9](#), costs. The court also held that the appropriate standard of review was the substantial evidence test and not the independent judgment test, since the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record. (Opinion by Woods (Fred), J., with Lillie, P. J., and Johnson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Administrative Law § 138--Judicial Review and Relief--Decision of Courts on Review--Appellate Courts--Standard of Review.

On appeal from the trial court's denial of a county's petition for a writ of mandate to compel the Commission on State Mandates to vacate its determination that [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, the appropriate standard of review was the substantial evidence test and not the independent judgment test. The independent judgment test applies when the order or decision substantially affects a fundamental vested right, and the county had no such right. Further, pursuant to [Gov. Code, § 17559](#), which governs the state mandates process, a claimant or the state may commence a mandamus proceeding under [Code Civ. Proc., § 1094.5](#), to set aside a decision of the commission on the ground that the decision is not supported by substantial evidence. Where the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record, the function of the reviewing court on appeal from the judgment is the same as that of the trial court, that is, to review the administrative decision to determine whether it is supported by substan-

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tial evidence on the whole record.

(2) Administrative Law § 131--Judicial Review and Relief--Scope and Extent of Review--Evidence--Substantial Evidence Test.

The substantial evidence test is that standard of judicial review in which the trial court reviews the evidence adduced at the administrative hearing to determine whether there is substantial evidence in support of the agency's finding in light of the whole record. "Substantial evidence" is evidence of ponderable legal significance, which is reasonable in nature, credible, and of solid value.

(3a, 3b, 3c) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases.

The trial court properly denied a writ of mandate sought by a county to compel the Commission on State Mandates to vacate its determination that [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute a state mandate, for which the state was obligated to reimburse the county pursuant to [Cal. Const., art. XIII B, § 6](#). The requirements of [Pen. Code, § 987.9](#), are not state mandated. Pursuant to the federal Constitution's guaranty of the right to counsel and its due process clause ([U.S. Const., 6th](#) and [14th](#) Amends.), the right to counsel of an indigent defendant includes the right to the use of experts to assist counsel in preparing a defense. Thus, even in the absence of [Pen. Code, § 987.9](#), counties would be responsible for providing ancillary services under those federal constitutional guaranties. And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under [Cal. Const., art. XIII B, § 6](#). If a local entity has alternatives under the statute other than the mandated contribution, that contribution does not constitute a state mandate. In fact, the requirements under [Pen. Code, § 987.9](#), are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under the statute.

[See 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4) Criminal Law § 88--Rights of Accused--Aid of Counsel--Indigent Defendants--Scope of Assistance--Right to Use of Experts to Assist Counsel in Preparation of Defense.

A state is required by the United States Constitution to provide counsel for indigent defendants, and that right includes the right to the use of any experts that will assist counsel in preparing a defense. If expert or investigative help is necessary to the defense pending the preliminary hearing, due process requires the state to provide the service to an indigent defendant. Further, the right to competent counsel derives not exclusively from the due process clause of [U.S. Const., 14th](#) Amend., but also from the constitutional right to the assistance of counsel. Thus, the appointment of experts on behalf of an indigent defendant is constitutionally compelled in a proper case as a fundamental part of the right of an accused under [U.S. Const., 6th](#) Amend., to be represented by counsel.

(5) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--"New Program"--Provisions of State Statute Required by Federal Law.

A "new program" within the meaning of [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for new programs mandated by state), is a program that carries out the governmental function of providing services to the public, or a law that, to implement state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. But no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus do not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This is true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no true choice in the manner of implementation of the federal mandate.

(6) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases--As Unlawful Shifting of Costs of State-administered Program.

The decision of the Commission on State Mandates not to reimburse counties for their programs under [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases), did not constitute an unlawful shifting of the financial responsibility of this program from the state to the

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counties. The program had never been operated or administered by the State of California, and the counties had always borne legal and financial responsibility for implementing the procedures under the statute. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility.

(7) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases--Legislature's Initial Finding of State Mandate as Binding on Trial Court.

The Legislature's initial appropriation to reimburse counties for the costs of [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases), was not a final and unchallengeable determination that the statute constitutes a state mandate, nor did the Commission on State Mandates err in finding that the statute is not a state mandate, despite the Legislature's finding to the contrary in a later appropriations bill. The commission was not bound by the Legislature's determination, and it had discretion to determine whether a state mandate existed. The comprehensive administrative procedures for resolution of claims arising out of [Cal. Const., art. XIII B, § 6](#) ([Gov. Code, § 17500](#) et seq.), are the exclusive procedures by which to implement and enforce the constitutional provision. Thus, the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Any legislative findings are irrelevant to the issue of whether a state mandate exists, and the commission properly determined that no such mandate existed. In any event, the Legislature itself ceased to regard the provisions of [Pen. Code, § 987.9](#), as a state mandate in 1983.

(8) State of California § 12--Fiscal Matters--Appropriations--As Legislative Power--Appropriation by One Legislature as Binding Future Legislatures--Costs of Funding by Court for Preparation of Defense for Indigent Defendants in Capital Cases:Legislature § 5--Powers.

The Legislature's initial determination to enact an appropriation to reimburse counties for their costs under [Pen. Code, § 987.9](#) (funding by court for preparation of defense for indigent defendants in capital cases), did not obligate it to enact an appropriation every year in perpetuity to reimburse the

counties, nor did this determination prevent future legislatures from refusing to appropriate monies for [Pen. Code, § 987.9](#), costs. A contrary conclusion would be directly contrary to law and would necessarily unlawfully infringe on the Legislature's constitutional authority to enact appropriations ([Cal. Const., art. IV, § 1](#)). This authority resides with the Legislature under the doctrine of separation of governmental powers. Thus, the Legislature has the authority and the discretion to determine appropriations. If the Legislature, in its wisdom and discretion, has decided not to appropriate monies to reimburse counties for their costs under [Pen. Code, § 987.9](#), it is well within the exercise of its constitutional authority.

COUNSEL

De Witt W. Clinton, County Counsel, and Stephen R. Morris, Principal Deputy County Counsel, for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Shelleyanne W. L. Chang, Deputy Attorneys General, for Real Parties in Interest and Respondents. *810

WOODS (Fred), J.

I.

Factual and Procedural Summary

A. Procedural.

On December 22, 1992, appellant filed its first amended verified petition for writ of mandate. In its petition, appellant sought a peremptory writ of mandate compelling respondent Commission on State Mandates (the Commission) to vacate its determination that [Penal Code section FNI 987.9](#) did not constitute a state mandate, for which the state was obligated to reimburse appellant pursuant to [article XIII B, section 6, of the California Constitution](#). The petition also named as real parties in interest, State Controller Gray Davis, the Department of Finance, and Director of Finance Thomas W. Hayes.

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FN1 Unless otherwise noted, all statutory references are to the Penal Code.

Appellant also sought an order from the lower court, determining that [section 987.9](#) constituted a state mandate and compelling respondents to process appellant's claims.

On or about May 18, 1993, the State of California, Gray Davis, the Department of Finance, and Thomas W. Hayes filed an answer to the first amended verified petition for writ of mandate.

On or about May 19, 1993, the Commission filed its answer to the first amended verified petition for writ of mandate.

On June 30, 1993, appellant filed a motion for peremptory writ of mandate pursuant to [Code of Civil Procedure section 1094.5](#).

On or about August 6, 1993, the Commission filed its opposition. *811

On or about August 13, 1993, the State of California, Gray Davis, the Department of Finance, and Thomas W. Hayes filed their opposition.

On October 8, 1993, after hearing oral arguments, the lower court denied the petition for review, finding that the Sixth Amendment of the United States Constitution guaranteed an indigent criminal defendant the right to publicly funded counsel and the right to ancillary services and that the Commission, as a quasi-judicial body, properly determined within its jurisdiction, that [section 987.9](#) was not a state mandate.

Judgment denying the petition for writ of mandate was entered on November 4, 1993.

A notice of entry of judgment was filed on December 7, 1993.

On December 7, 1993, appellant filed its notice of appeal.

B. Facts.

Appellant asserts [section 987.9](#) is a state mandate, constituting a new program or higher level of service, thereby requiring reimbursement by respondents pursuant to [article XIII B, section 6, of the California Constitution](#).^{FN2}

FN2 [Article XIII B, section 6, of the California Constitution](#) provides, in pertinent part: "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 program or increased level of service"

[Section 987.9](#) was added to the Penal Code on September 24, 1977, by chapter 1048, section 1, pages 3178-3179, of the Statutes of 1977.^{FN3} Included *812 in the law was an appropriation in the amount of \$1 million for "disbursement to local agencies pursuant to [Section 2231 of the Revenue and Taxation Code](#) to reimburse such agencies for costs incurred by them pursuant to this act."^{FN4}

FN3 [Section 987.9](#) provides, in pertinent part, as follows: "In the trial of a capital case or a case under subdivision (a) of [Section 190.05](#) the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of an application, a judge of the court, other than the trial judge presiding over the case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to the defendant's attorney. The ruling on the reasonableness of the request shall be made at an in camera hearing. In making the ruling, the court shall be guided by the need to provide a complete and full defense for the defendant."

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FN4 Former Revenue and Taxation Code section 2231, subdivision (a), required the state to reimburse local agencies for all costs mandated by the state, as defined in [Revenue and Taxation Code section 2207](#).

Former Revenue and Taxation Code section 2207 provided, in pertinent part: “ Costs mandated by the state’ means any increased costs which a local agency is required to incur as a result of the following:

“(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program....”

From 1977 to 1982, the first five years after the enactment of [section 987.9](#), the Legislature enacted an appropriation to reimburse counties for their costs under that section in each annual budget act along with the following language, “for reimbursement, in accordance with subdivision (a) of [section 2231 of the Revenue and Taxation Code](#).”

In the 1983 Budget Act (Stats. 1983, ch. 323), while an appropriation was made, the appropriation no longer contained a reference to the Revenue and Taxation Code, but instead, specified that the funds were appropriated for “contributions to counties.”

In subsequent years, the Budget Act language was simply, “For local assistance, Assistance to Counties for Defense of Indigents.”

In the 1989-1990 Budget Act, the California Legislature enacted a \$13 million appropriation to reimburse counties for their costs under [section 987.9](#). The 1989-1990 Budget Act, with the \$13 million appropriation, was signed into law by the Governor. In the 1990-1991 Budget Act, however, no appropriation was made to reimburse counties for their [section 987.9](#) costs. Because of the lack of appropriation in the Budget Act, the Legislature introduced and passed Assembly Bill No. 2813, which would have appropriated the sum of \$13 million to reimburse counties for their [section 987.9](#) costs. Assembly Bill No. 2813, however, was vetoed by the Governor, and consequently no appropriation was made to counties to reimburse them for their costs in the 1990-1991 Budget Act.

Upon notification by the State Controller's Office that it would not issue claiming instructions and honor requests for payment of [section 987.9](#) costs for fiscal year 1990-1991, appellant filed its test claim with the Commission *813 on December 26, 1991, seeking reimbursement for its costs associated with [section 987.9](#) as a state-mandated cost.^{FN5}

FN5 A “test claim” is defined as “the first claim filed with the commission alleging costs mandated by the state as defined in [Sections 17514](#) and [17551 of the Government Code](#) in a particular statute or executive order.” ([Cal. Code Regs., tit. 2, § 1183](#).)

After hearing appellant's test claim, the Commission determined that [section 987.9](#) did not constitute a reimbursable state mandate. The Commission found that an indigent defendant's rights, as guaranteed by the provisions of the Sixth Amendment, were obligatory and that the appellant's obligation to provide services to indigent defendants was not mandated by the state, but rather by the United States Constitution and various court rulings. The Commission concluded that [section 987.9](#) did not impose a new program or higher level of service in an existing program within the meaning of [Government Code section 17514](#) and [article XIII B, section 6](#), of the California Constitution.

Appellant thereafter filed its petition for writ of mandate.

II.

Discussion

A. *The Appropriate Standard of Review of the Lower Court's Decision Is Substantial Evidence.*

(1a) Appellant argues the independent judgment standard of review governs this court's review of the lower court's decision. Appellant is mistaken. The independent judgment test applies when the order or decision substantially affects a fundamental vested right. ([Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.](#) (1979) 24 Cal.3d 335 [156 Cal.Rptr. 1, 595 P.2d 579].) Appellant has no fundamental vested right here and the appropriate standard

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of review is the substantial evidence test.

[Government Code section 17559](#) governs the state mandates process, and provides: “A claimant or the state may commence a proceeding in accordance with the provisions of [section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the commission on the ground that the commission's decision is *not supported by substantial evidence*. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing.” (Italics added.)

(2) The substantial evidence test is that standard of judicial review in which the trial court reviews the evidence adduced at the administrative *814 hearing to determine whether there is substantial evidence in support of the agency's finding in light of the whole record. “Substantial evidence” is evidence of ponderable legal significance, which is “reasonable in nature, credible and of solid value.” ([Pennel v. Pond Union School Dist.](#) (1973) 29 Cal.App.3d 832, 837, fn. 2 [105 Cal.Rptr. 817]; see also [Bowers v. Bernards](#) (1984) 150 Cal.App.3d 870, 873 [197 Cal.Rptr. 925].)

(1b) Where the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence on the whole record, the function of the reviewing court on appeal from the judgment is the same as that of the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record. ([Steve P. Rados, Inc. v. California Occupational Saf. & Health Appeals Bd.](#) (1979) 89 Cal.App.3d 590, 595 [152 Cal.Rptr. 510].)

B. An Indigent Defendant's Right to Ancillary Services Is Guaranteed by the Sixth Amendment of the United States Constitution.

(3a) Appellant asserts [section 987.9](#) is a state-mandated program for which it is entitled to be reimbursed. To the contrary, the requirements of [section 987.9](#) are not state mandated.

(4),(3b) A state is required by the United States Constitution to provide counsel for indigent defendants. ([Gideon v. Wainwright](#) (1963) 372 U.S. 335 [9 L.Ed.2d 799, 83 S.Ct. 792, 93 A.L.R.2d 733].) The

right to counsel includes the right to the use of any experts that will assist counsel in preparing a defense. ([In re Ketchel](#) (1968) 68 Cal.2d 397, 398 [66 Cal.Rptr. 881, 438 P.2d 625]; [Torres v. Municipal Court](#) (1975) 50 Cal.App.3d 778 [123 Cal.Rptr. 553]; [Mason v. State of Arizona](#) (9th Cir. 1974) 504 F.2d 1345, 1351.)

“It follows, therefore, that if expert or investigative help is necessary to the defense pending the preliminary hearing, due process requires the state to provide the service to indigents.” ([Anderson v. Justice Court](#) (1979) 99 Cal.App.3d 398, 401-402 [160 Cal.Rptr. 274].)

The California Supreme Court, in [People v. Frierson](#) (1979) 25 Cal.3d 142, 162 [158 Cal.Rptr. 281, 599 P.2d 587], held that the right to competent counsel derives not exclusively from the due process clause of the Fourteenth Amendment to the United States Constitution, but also from the constitutional right to the assistance of counsel. The court concluded that the failure of counsel to take reasonable investigative measures to prepare the apparently sole meritorious defense used at trial, resulted in the presentation *815 to the jury of an incomplete defense, and thus, deprived the defendant of his right to effective trial counsel. (*Id.*, at p. 164.)

Finally, in [People v. Worthy](#) (1980) 109 Cal.App.3d 514 [167 Cal.Rptr. 402], the court found that, although there was no specific authority in California for a trial court to appoint experts at county expense for an indigent defendant represented by private counsel, the appointment of experts was constitutionally compelled in a proper case as a fundamental part of the constitutional right of an accused to be represented by counsel.

Thus, even in the absence of [section 987.9](#), appellant and other counties would be responsible for providing ancillary services under the constitutional guarantees of due process under the Fourteenth Amendment and the Sixth Amendment right to counsel.

In [Corenevsky v. Superior Court](#) (1984) 36 Cal.3d 307 [204 Cal.Rptr. 165, 682 P.2d 360], an indigent defendant challenged a superior court order denying him ancillary defense services. The court traced the judicially imposed requirement that the right to counsel includes the right to reasonably necessary ancil-

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lary services: *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 428 [180 Cal.Rptr. 489, 640 P.2d 108] [“The right to effective counsel also includes the right to ancillary services necessary in the preparation of a defense.”]; *In re Ketchel, supra*, 68 Cal.2d 397, 399-400 [“ ‘A fundamental part of the constitutional right of an accused to be represented by counsel is that his attorney ... is obviously entitled to the aid of such expert assistance as he may need ... in preparing the defense.’ ”]; *Puett v. Superior Court* (1979) 96 Cal.App.3d 936, 938-939 [158 Cal.Rptr. 266] [“[T]he right to counsel encompasses the right to effective counsel which in turn encompasses the right of an indigent and his appointed counsel to have the services of an investigator.”] *People v. Fixel* (1979) 91 Cal.App.3d 327, 330 [154 Cal.Rptr. 132] [“The due process right of effective counsel includes the right to ancillary services necessary in the preparation of a defense.”]; *Mason v. State of Arizona, supra*, 504 F.2d 1345, 1351 [“[T]he effective assistance of counsel guarantee of the Due Process Clause requires, when necessary, the allowance of investigative expenses or appointment of investigative assistance for indigent defendants”]

The court in *Corenevsky* thus recognized that [section 987.9](#) merely codified these constitutional guarantees.
FN6 *816

FN6 While appellant correctly points out that the court in *Corenevsky* referred to “matters within the compass of [section 987.9](#)” as “state funded” (*Corenevsky v. Superior Court, supra*, 36 Cal.3d at p. 314, original italics), this was not a ruling that such funding was required, but merely a recognition of the fact that, in 1984, when the court's opinion was issued, such funding had been through the Legislature's annual appropriation.

C. [Section 987.9](#) Merely Implements the Guarantees Provided by the Sixth Amendment of the United States Constitution.

[California Constitution, article XIII B, section 6](#), provides: “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 program or increased level of

service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

“(a) Legislative mandates requested by the local agency affected;

“(b) Legislation defining a new crime or changing an existing definition of a crime; or

“(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

(5) The California Supreme Court has defined what is a “new program” or “increased cost,” stating that the drafters and electorate had “in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].)

The courts have concluded that no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law.

“When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no 'true choice' in the manner of implementation of the federal mandate.” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 [15 Cal.Rptr.2d 547]; see also *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76 [*817266 Cal.Rptr. 139, 785 P.2d 522]; *County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 349 [280 Cal.Rptr. 310].) FN7

FN7 The argument that [section 987.9](#) is a “new program” because it requires in camera hearings, confidentiality and a second

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trial judge is disingenuous. The additions of those procedural requirements add nothing to the cost of the statute but are, in fact, designed to curtail costs and to protect defendants and confidentiality rights. They do not involve additional expenses. The financial impact, if any, of these requirements is merely incidental.

D. The State Has Not Shifted the Costs of a State-administered Program to the Counties.

1. *Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 3188]* is *inapposite*.

(6) Appellant argues that the Commission's decision not to reimburse the counties for their programs under [section 987.9](#) constitutes an unlawful shifting of the financial responsibility of this program from the state to the counties, in violation of the California Supreme Court's holding in *Lucia Mar*.

To the contrary, *Lucia Mar* is factually distinguishable from the case presented by appellant. In *Lucia Mar*, the handicapped school program in issue had been operated and administered by the State of California for many years. The court found primary responsibility rested with the state and that the transfer of financial responsibility from the state through state tax revenues to school districts through school district tax and assessment revenues in the school district treasuries imposed a new program on [school districts](#). (44 Cal.3d at p. 835.)

Upon the enactment of a statute requiring local school districts to contribute to the cost of educating their handicapped students at the state schools, the court determined it was a “new program” within the meaning of [article XIII B, section 6, of the California Constitution](#). (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at p. 836 [“The intent of [\[section 6 of article XIII B\]](#) would plainly be violated if the state could, *while retaining administrative control of programs* it has supported with state tax money, simply shift the cost of the programs to local government” (Italics added).])

In contrast, the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsi-

bility for implementing the procedures under [section 987.9](#). The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility. There has been no shift of costs from the state to the counties and *Lucia Mar* is, thus, *inapposite*. *818

Lucia Mar is further distinguishable because the court in *Lucia Mar* never addressed the issue presented here. That is, whether the statute in question constituted a state mandate within the meaning of [article XIII B, section 6, of the California Constitution](#). While the court in *Lucia Mar* found that the statute created a new program, it did not reach a determination of whether the school district was mandated by the state to pay these costs within the meaning of [article XIII B, section 6, of the California Constitution](#), and remanded the matter to the lower court to resolve this issue. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at p. 837.)

2. Assuming, *arguendo*, [section 987.9](#) constitutes a “new program” or “increased costs,” it is not a state mandate.

(3c) Assuming, *arguendo*, the provisions of [section 987.9](#) were determined to be a new program, it does not necessarily lead to the conclusion that the program is a state mandate under [California Constitution, article XIII B, section 6](#).

If a local entity or school district has alternatives under the statute other than the mandated contribution, it does not constitute a state mandate. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 836-837.) In fact, the requirements under [section 987.9](#) are not mandated by the state, but rather by principles of constitutional law and a superior court's finding of reasonableness and necessity under [section 987.9](#).

E. The Legislature's Initial Finding of a State Mandate Was Not Binding on the Lower Court.

1. *The Commission has exclusive authority to determine whether a state mandate exists.*

(7) Appellant argues that the Legislature's initial appropriation of \$1 million to reimburse the counties,

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containing the language “pursuant to [Section 2231 of the Revenue and Taxation Code](#),” is a final and unchallengeable determination that [section 987.9](#) constitutes a state mandate and that, in light of the Legislature’s initial finding in Assembly Bill No. 2813, the Commission erred in finding otherwise. Appellant argues that the Commission was bound by the Legislature’s determination and that it had no discretion to determine whether a state mandate existed.

Appellant, however, is mistaken. The findings of the Legislature as to whether [section 987.9](#) constitutes a state mandate are irrelevant. The Legislature enacted comprehensive administrative procedures for resolution of claims arising out of [article XIII B, section 6](#). ([Gov. Code, § 17500](#) et seq.) *819 The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. ([Kinlaw v. State of California \(1991\) 54 Cal.3d 326, 331](#) [[285 Cal.Rptr. 66, 814 P.2d 1308](#)].)

“It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature’s expressed intent, that the exclusive remedy for a claimed violation of [section 6](#) lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.... [¶] ... *In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [section 6](#).*” ([Kinlaw v. State of California, supra, 54 Cal.3d at p. 333](#), italics added.)

Thus, the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed.

2. *Beginning in 1983, the Legislature no longer considered [section 987.9](#) a state mandate.*

Assuming, arguendo, the Legislature’s findings are entitled to some weight, the Legislature, itself, ceased to regard the provisions of [section 987.9](#) as a state mandate in 1983. For the first five years after [section 987.9](#) was enacted, the appropriation in the annual budget acts would be made in accordance with former Revenue and Taxation Code section 2231. The budget acts would contain the following language: “For reimbursement, in accordance with subdivision (a) of [section 2231 of the Revenue and Taxation Code](#).”

In the 1983 Budget Act, however, the funds were appropriated for “contributions to counties.” There is no mention of the Revenue and Taxation provisions. In every succeeding year, the Budget Act language was simply “For local assistance, Assistance to Counties for Defense of Indigents.”

The absence of any reference to the Revenue and Taxation Code sections indicates that the Legislature ceased to regard [section 987.9](#) as a state mandate. Although the Legislature ceased to regard [section 987.9](#) as a state mandate, it nevertheless, continued to appropriate moneys for reimbursement to counties as a means of voluntarily providing local assistance. *820

Thus, the Legislature ceased making appropriations because it recognized that it no longer had a legal obligation to do so under the Revenue and Taxation Code or [article XIII B, section 6](#), of the California Constitution.

F. Appellant’s Request for Reimbursement Unlawfully Infringes on the Legislature’s Authority of Appropriation.

(8) Appellant argues that the Legislature’s initial determination to enact an appropriation to reimburse counties for their costs under [section 987.9](#) obligated it to enact an appropriation every year in perpetuity to reimburse the counties and that this determination binds future legislatures from refusing to appropriate moneys for [section 987.9](#) costs.

Appellant’s theory is directly contrary to law and would necessarily unlawfully infringe upon the Legislature’s constitutional authority to enact appropri-

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tions. The appropriation of tax revenues is a legislative power granted by [article IV, section 1, of the California Constitution](#), and the authority to appropriate moneys resides with the Legislature under the doctrine of separation of governmental powers. ([California State Employees' Assn. v. Flourney \(1973\) 32 Cal.App.3d 219, 234 \[108 Cal.Rptr. 251\]](#).) Thus, the Legislature has the authority and the discretion to determine appropriations. ([Mandel v. Myers \(1981\) 29 Cal.3d 531, 539 \[174 Cal.Rptr. 841, 629 P.2d 935\]](#).)

If the Legislature, in its wisdom and discretion, has decided not to appropriate monies to reimburse counties for their costs under [Penal Code section 987.9](#), it is well within the exercise of its constitutional authority. It is not obligated to enact the same appropriations year after year, as appellant claims.

III.

Disposition

The judgment is affirmed. Respondents are awarded costs of appeal.

Lillie, P. J., and Johnson, J., concurred.
Appellant's petition for review by the Supreme Court was denied May 11, 1995. *821

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H

BERKELEY UNIFIED SCHOOL DISTRICT et al.,
 Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et al., Defendants
 and Respondents.

No. C017483.

Court of Appeal, Third District, California.

Mar 23, 1995.

SUMMARY

Numerous school districts petitioned for a writ of mandamus and declaratory relief, seeking reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#), for the costs of a state-mandated desegregation program. The trial court entered a judgment denying the petition on the ground that it was barred by the statute of limitations. (Superior Court of Sacramento County, No. CV373038, James L. Long, Judge.)

The Court of Appeal affirmed. The court held that the districts waived their nonstatutory remedy for reimbursement of their costs incurred after the Legislature deleted funds in a claims bill to pay for the costs, since their statutory cause of action under [Gov. Code, § 17612](#), accrued on that date and they could have avoided the imposition of state-mandated costs at any time after that cause of action accrued by timely use of the statutory remedy. Further, accrual of the cause of action was not postponed until the statute of limitations had run on the state's right to judicial review of an administrative determination in a test claim that there was a state mandate or until final judgment in any litigation brought by the test claimant or the state. Although the administrative decision in the test claim was not yet free of direct attack, under the doctrine of exhaustion of administrative remedies, judicial interference is withheld only until the administrative process has run its course, and that had occurred when, in the test claim case, the administrative agency had approved the claim that the desegregation regulations imposed a state mandate and issued guidelines for reimbursement for the claimed expenditures from the Legislature. [Gov. Code, § 17612](#), implies that

judicial interference must be withheld until the narrowly prescribed legislative process has also run its course. It does not imply that the judicial forum is unavailable thereafter. The court also held that the state was not estopped to rely on the statute of limitations as a defense to the action and that the doctrine of equitable tolling did not apply so as to extend the statute of limitations. (Opinion by Blease, Acting P. J., with Nicholson and Raye, JJ., concurring.) *351

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Reimbursement of Local Entities for State-mandated Expenditures--Claims for Reimbursement--Statute of Limitations--Nonstatutory Cause of Action--Accrual.

Since the statutory scheme ([Gov. Code, § 17500](#) et seq.) for resolution of state mandate claims arising under [Cal. Const., art. XIII B, § 6](#), contemplates that the Legislature will appropriate funds in a claims bill to reimburse an affected entity for state-mandated expenditures made prior to its enactment, the date the Legislature deletes such funds is also the point at which a nonstatutory cause of action logically accrues for the reimbursement of expenditures that are not recoverable under the statutory procedure.

[See 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(2a, 2b) State of California § 11--Fiscal Matters--Reimbursement of Local Entities for State-mandated Expenditures--Claims for Reimbursement-- Waiver of Nonstatutory Remedy--Failure to Seek Relief Provided by Statute.

School districts, which sought reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#), for the costs of a state mandated desegregation program, waived their nonstatutory remedy for such costs incurred after the Legislature deleted funds in a claims bill to pay for the costs, since their statutory cause of action under [Gov. Code, § 17612](#), accrued on that date and they could have avoided the imposition of state-mandated costs at any time after that cause of action accrued by timely use of the statutory remedy. [Gov. Code, § 17612](#), provides, as to future state-mandated

expenditures, an efficacious procedure for the implementation of local agency rights under [Cal. Const., art. XIII B, § 6](#). Thus, as to such expenditures, the exercise of the constitutional right to avoid involuntary expenditures is not unduly restricted. There is no statutory remedy of reimbursement of state-mandated expenditures that could have been prevented after funding has been deleted from the local government claims bill. The courts accordingly must limit the remedy for future expenditures to the procedures established by the Legislature in [Gov. Code, § 17612](#). It follows that any claim to reimbursement of subsequent costs is waived by the failure to seek the relief provided by that statute.

(3) Estoppel and Waiver § 18--Waiver--Definition. Generally, "waiver" denotes the voluntary relinquishment of a known right. But it *352 can also mean the loss of an opportunity or a right as a result of a party's failure to perform an act it is required to perform, regardless of the party's intent to abandon or relinquish the right.

(4) State of California § 11--Fiscal Matters--Reimbursement of Local Entities for State-mandated Expenditures--Claims for Reimbursement--Statute of Limitations--Action for Which No Limitation Period Previously Provided.

The judicially created remedy to enforce the right of local entities arising under [Cal. Const., art. XIII B, § 6](#), to reimbursement for the costs of state-mandated programs is subject to the four-year limitations period provided in [Code Civ. Proc., § 343](#) (action for relief for which no period of limitations previously provided).

(5) State of California § 11--Fiscal Matters--Reimbursement of Local Entities for State-mandated Expenditures--Claims for Reimbursement--Statute of Limitations--Statutory Cause of Action--Accrual--As Affected by Pendency of Test Claim.

A cause of action by school districts for reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#), for the costs of a state-mandated desegregation program accrued, pursuant to [Gov. Code, § 17612](#), on the date the Legislature deleted funds in a claims bill to pay for the costs, and accrual was not postponed until the statute of limitations had run on the state's right to judicial review of an administrative determination in a test claim that there was a state mandate or until final judgment in any litigation brought by the test claimant or the state. Although the administrative decision in the test claim was not yet free of direct attack, under the doctrine of exhaustion

of administrative remedies judicial interference is withheld only until the administrative process has run its course, and that had occurred when, in the test claim case, the administrative agency had approved the claim that the desegregation regulations imposed a state mandate and issued guidelines for reimbursement for the claimed expenditures from the Legislature. [Gov. Code, § 17612](#), implies that judicial interference must be withheld until the narrowly prescribed legislative process has also run its course. It does not imply that the judicial forum is unavailable thereafter.

(6) Limitation of Actions § 65--Estoppel--Action for Reimbursement of Local Entities for State-mandated Expenditures--Justification of Plaintiff's Reliance on Defendant's Conduct.

The state was not estopped to rely on the statute of limitations as a defense to an action by school districts for reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#), for the costs of a state-mandated desegregation program. *353 Although, pursuant to [Gov. Code, § 17612](#), the cause of action accrued on the date the Legislature deleted funds in a claims bill to pay for the costs, the districts claimed that the accrual date was postponed due to the then pending judicial review of an administrative determination in a test claim that there was a state mandate, and that the state was disingenuous because it argued against administrative collateral estoppel in that case and asserted in this case that the test claim process had been completed at the time of the deletion of funds in the claims bill. However, there is no inconsistency between an absence of administrative collateral estoppel and completion of the administrative test claim process. Also, there was no implied representation by the state that it would be governed by the determination of the mandate issue in the other case in the statutory scheme concerning reimbursement of statemandated costs, nor in compliance with that scheme by state officials. Finally, there was no evidence that the districts had relied on the conduct of the state in delaying the filing of the action.

[See 3 **Witkin**, Cal. Procedure (3d ed. 1985) Actions, § 523.]

(7) Limitation of Actions § 57--Tolling or Suspension of Statute--Equitable Tolling--Action for Reimbursement of Local Entities for State-mandated Expenditures--Failure of Plaintiff to Pursue Different Legal Remedy.

The doctrine of equitable tolling, which provides that, if the defendant is not prejudiced thereby, the

running of the limitations period is tolled when an injured person has several legal remedies and, reasonably and in good faith, pursues one, did not apply so as to extend the statute of limitations in an action by school districts for reimbursement pursuant to [Cal. Const., art. XIII B, § 6](#), for the costs of a state-mandated desegregation program. Although, at the time the cause of action accrued pursuant to [Gov. Code, § 17612](#), there was a pending judicial review of an administrative determination in a test claim that there was a state mandate, the districts did not participate in that case. Thus, the districts were not disadvantaged by the passage of time attributable to their good faith error in having earlier pursued a different legal remedy, since they never pursued an earlier legal remedy. Moreover, even though the other case might have been suitable for maintenance as a class action, it could not be treated as if it had been such.

[See 3 **Witkin**, Cal. Procedure (3d ed. 1985) Actions, § 502 et seq.] *354

COUNSEL

Breon, O'Donnell, Miller, Brown & Dannis, Emi R. Uyehara and Brant T. Lee for Plaintiffs and Appellants.

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Shelleyanne W. L. Chang, Deputy Attorneys General, and Gary D. Hori for Defendants and Respondents.

BLEASE, Acting P. J.

This is an appeal by numerous school districts (the Districts) from a judgment denying them reimbursement, pursuant to [California Constitution, article XIII B, section 6](#), [FN1] for the costs of a program, formerly required by regulations of the Department of Education, to alleviate and prevent racial and ethnic segregation of students (the antisegregation regulations). The trial court entered a judgment denying the Districts' petition for mandamus and declaratory relief on the ground it is barred by the statute of limitations. The Districts appeal.

FN1 References to an article are to articles of the [California Constitution, Article XIII](#)

[B, section 6](#), with exceptions, provides that the state shall provide a subvention of funds to reimburse local governments for costs incurred as a consequence of Legislative mandates enacted after January 1, 1975, and executive orders or regulations initially implementing legislation enacted after such date.

[Government Code section 17612](#) [FN2] establishes the exclusive remedy for violation of [article XIII B, section 6](#), after the Legislature has deleted funds from a local government claims bill to pay for the mandated costs-an action to stay enforcement of the further expenditure of mandated costs. The date the Legislature deletes the funds also is the date upon which a cause of action accrues for reimbursement of state-mandated costs expended prior to that date.

FN2 References to a section are to sections of the Government Code unless otherwise indicated.

We will conclude that because the Districts did not use the remedy of [section 17612](#) they waived any right to reimbursement for costs incurred thereafter and that the statute of limitations has run as to costs expended prior to that date.

We will affirm the judgment. *355

Facts and Procedural Background

The background of this controversy is related in [Long Beach Unified School Dist. v. State of California \(1990\) 225 Cal.App.3d 155 \[275 Cal.Rptr. 449\] \(Long Beach\)](#).

In 1977 the Department of Education adopted the antisegregation regulations which required that school districts adopt a plan to alleviate and prevent racial and ethnic segregation of students in any district that was segregated or in danger of segregation. ([Long Beach, supra, 225 Cal.App.3d at p. 165.](#))

In 1982 Long Beach Unified School District filed a claim with the Board of Control seeking reimbursement under [article XIII B, section 6](#), for statemandated costs occasioned by the antisegregation regulations. ([Long Beach, supra, 225 Cal.App.3d at p. 165.](#))

In 1984 the Board of Control approved the claim, reported the finding to the Legislature, and recommended reimbursement. (*Long Beach, supra*, 225 Cal.App.3d at p. 166.) In March 1985 a local government claims bill was introduced in the Legislature containing an appropriation for the reimbursement of the costs of complying with the mandate. (*Ibid.*) The appropriation was deleted from the bill before its enactment in September of that year. (*Id.* at pp. 166-167.)

In June 1986, Long Beach officials filed a complaint seeking reimbursement of the funds it had expended under the state mandate. (*Long Beach, supra*, 225 Cal.App.3d at p. 167.) The trial court granted the relief, directing that Long Beach be reimbursed from funds appropriated to specified line items in the 1986 and ensuing state budget acts. (*Id.* at p. 180.)

In November 1990 the Court of Appeal affirmed the judgment after modifying it to delete line items not reasonably available for this purpose. (*Long Beach, supra*, 225 Cal.App.3d at pp. 186-187.) The Supreme Court denied the petition for review in February 1991. (*Id.* at p. 187.) The Department of Education repealed the antisegregation regulations, effective July 1991.

On December 24, 1992, the Districts filed the complaint in this action. They seek a writ of mandate compelling the state and various state agencies and officials (the defendants) to reimburse them from specified line item appropriations in various state budget acts for costs they incurred pursuant to the antisegregation regulations in fiscal years 1977-1978 through 1990-1991.

The Districts appeal from the adverse decision of the trial court. *356

Discussion

I

The Districts seek to maintain a cause of action for reimbursement of expenditures made in compliance with the antisegregation regulations of the state Department of Education, which were in effect from 1977 until their repeal in 1991.

In our view, that tenders two issues, one having to do with the expenditure of funds after September 1985, the date upon which the Legislature deleted funds to pay for the desegregation mandate, and the other having to do with the expenditure of funds prior to that date. The September 1985 date is significant for

it is the date upon which the Districts first had a right to bring an action for declaratory and injunctive relief pursuant to [section 17612](#), subdivision (c), to prevent the further compelled expenditure of funds. It is also significant as the date upon which there accrued a cause of action for the reimbursement of funds expended prior to the Legislature's action.

The trial court ruled against the Districts on the ground the statute of limitations ran as to all claims for reimbursement. We will affirm that ruling insofar as it is predicated upon the Districts' four-year delay in taking action to seek reimbursement of funds expended prior to September 1985, when that cause of action accrued. As to funds expended after that date, the Districts have waived any remedy of reimbursement of moneys which they need not have expended had they taken action under [section 17612](#), subdivision (c), to declare the mandate unenforceable.

We will address these issues seriatim.

II

The claims in this case stem from [article XIII B, section 6](#), which provides that "[w]henver 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 program or increased level of service" *357

The Legislature has enacted a statutory scheme for the enforcement of this provision. The scheme was adopted in 1980 and modified in 1984. [FN3] Since the Districts offer no argument predicated upon any difference between the present scheme and its predecessors, we look to the present enactment contained in the Government Code.

FN3 At the time that Long Beach filed its original claim the statutory scheme addressing reimbursement pursuant to [article XIII B, section 6](#), was contained in the Revenue and Taxation Code. (Stats. 1980, ch. 1256.) This scheme was substantially amended in 1982 (Stats. 1982, ch. 735) and was then superseded by enactment in 1984 of the present scheme contained in the Government Code (Stats. 1984, ch. 1459). That scheme has been amended from time to time thereafter.

made. (§ 17522.)

We excerpt the following summary of that scheme from [Kinlaw v. State of California \(1991\) 54 Cal.3d 326, 331-334 \[285 Cal.Rptr. 66, 814 P.2d 1308\]](#): "In part 7 of division 4 of title 2 of the Government Code, 'State-Mandated Costs,' which commences with [section 17500](#), the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state-mandated program (§ § 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. (§ 17525.)

"The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554), establishes the method of payment of claims (§ § 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates ([§ § 17562, 17600, 17612](#), subd. (a).)

"Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies and school districts are to file claims for reimbursement of state-mandated costs with the Commission (§ § 17551, 17560), and reimbursement is to be provided only through this statutory procedure. (§ § 17550, 17552.)

"The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a 'test claim.' (§ 17521.) [FN4] A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the *358 Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

FN4 Under the statutory terminology, a "test claim" is not a reimbursement claim but "the first claim filed ... alleging that a particular statute or executive order imposes costs mandated by the state." (§ 17521.) A "reimbursement claim" is a claim filed with the Controller for the reimbursement of costs for which an appropriation has been

"A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting 'parameters and guidelines' for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to [Code of Civil Procedure section 1094.5](#). (§ 17559.)

"The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subs. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. ([§ 17562](#).) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. ([§ 17600](#).) The Legislature must then adopt a 'local government claims bill.' If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. ([§ 17612](#).)

"Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

"It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a

claimed violation of [section 6](#) lies in these procedures. The statutes create an *359 administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid ([§ 17612](#)).

"The legislative intent is clearly stated in [section 17500](#): 'It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIII B of the California Constitution](#) and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution....' And section 17550 states: 'Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter.' "

"Finally, section 17552 provides: 'This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by [Section 6 of Article XIII B of the California Constitution](#).' [Italics added.]

"In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [section 6](#)." (Fns. omitted.)

III

(1) In determining when a cause of action accrues for violation of [article XIII B, section 6](#), we first turn to the statutory scheme. Under [section 17612](#) [FN5] an affected entity is given a statutory cause of action for prospective relief from compelled expenditures made under an unfunded state mandate which accrues when the Legislature deletes funding from a local government *360 claims bill after the successful completion of the administrative process. Since the statutory scheme contemplates that the Legislature will appropriate funds in the claims bill to reimburse an affected entity for state-mandated expenditures made prior to its enactment, the date the Legislature deletes such funds is also the point at which a nonstatutory cause of action under [Mandel v. Myers](#) (1981) 29 Cal.3d 531 [174 Cal.Rptr. 841, 629 P.2d 935] (hereafter *Mandel*) logically accrues for the reimbursement of expenditures that are not

recoverable under the statutory procedure. (See, e.g., [Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521, 548 [234 Cal.Rptr. 795].) Under *Mandel* a court may order state officials to disregard invalid restrictions upon the expenditure of generally related funds which have been appropriated and are otherwise available for the payment of a financial obligation of the state.

FN5 [Section 17612](#) is as follows.

"(a) Immediately upon receipt of the report submitted by the commission pursuant to [Section 17600](#), a local government claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of these mandates except where the costs have been or will be paid pursuant to Section 17610.

"(b) The Legislature may amend, modify, or supplement the parameters and guidelines for mandates contained in the local government claims bill. If the Legislature amends, modifies, or supplements the parameters and guidelines, it shall make a declaration in the local government claims bill specifying the basis for the amendment, modification, or supplement.

"(c) If the Legislature deletes from a local government claims bill funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement."

The Districts do not distinguish between the exclusive statutory remedy provided by [section 17612](#) and the *Mandel* remedy. They assume that all expenditures are recoverable under *Mandel*. They make several arguments for the delayed accrual of such a cause of action beyond the date the Legislature denied funding in the local government claims bill. In the alternative, they argue that even if the cause of action does accrue at that date they are entitled to seek reimbursement for all of their expenditures under the mandate which occurred within the limitations period immediately preceding the filing of their complaint.

We address these arguments in inverted order.

A.

The precise workings of the statutory scheme for reimbursement of state mandated costs is critical to the resolution of the Districts' claims. It provides that a test claim may be brought by an affected entity leading to a local government claims bill, which should contain an appropriation of funds estimated to be required for the reimbursement of the mandated costs expended and to be expended by all of the affected entities. [FN6] After the successful completion of the administrative procedure leading to the submission of a claims bill to the Legislature, and upon the final action deleting that funding, an affected entity is authorized to file an action in the superior court to declare the mandate unenforceable and to enjoin its enforcement. (§ 17612, subd. (c).) *361

FN6 See footnote 5 for the distinction between a test claim (§ 17521) and a reimbursement claim (§ 17522). The claims act imposes statutory limitations upon the manner and timing of a reimbursement claim filed to recover funds appropriated to pay state-mandated costs. (See, e.g., § 17561, subd. (d)(1).) Because in this case no funds were appropriated we are not concerned with a reimbursement claim or with the requirements appurtenant thereto.

In the light of this remedy the Districts had a statutory cause of action to declare the mandate unenforceable and to enjoin its enforcement which arose in September 1985 when the Legislature deleted the funding contained in the local government claims bill.

As related, the Districts argue that the cause of action for costs incurred under an unfunded state mandate is ongoing and that they are entitled to recover such costs if expended within the period of the statute of limitations. The defendants reply that if the affected local government fails to sue within the limitations period it is forever barred from relief.

The Districts imply failure to sue prior to expiration of the limitations period initiated by final action deleting funds from the local government claims bill would not insulate the state from an action to enjoin the further expenditure of unfunded state-mandated costs. (See generally, *Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 105-106 [165 Cal.Rptr. 100, 611 P.2d 441]; *California Trout, Inc. v. State Water*

Resources Control Bd. (1989) 207 Cal.App.3d 585, 628-633 [255 Cal.Rptr. 184].) If that were not the case, they suggest, once the limitations period expired the state would gain a perpetual ability to enforce the unfunded state mandate. However, we need not resolve either point because the Districts failed altogether to employ the remedy provided by [section 17612](#) to avoid the costs incurred after 1985 and we deem that a waiver of any claim to reimbursement.

Section 17552 provides that the statutory scheme is the exclusive procedure for claiming reimbursement for costs mandated by the state. "The Legislature has the authority to establish procedures for the implementation of local agency rights under [section 6](#). Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. [Citations.]" (*Kinlaw v. State of California, supra*, 54 Cal.3d at p. 334.) We discern no undue restriction of the constitutional right against *involuntary* imposition of costs under a state mandate in limiting the Districts to the remedy provided them under [section 17612](#) whenever that remedy would be efficacious. [FN7] (But see generally, *Carmel Valley Fire Protection Dist. v. State of California supra*, 190 Cal.App.3d at p. 549.)

FN7 The prospective remedy provided by [section 17612](#), by its very nature, does not extend retrospectively to funds already expended prior to the date it accrues.

Once the Legislature deletes funding from a local government claims bill, the local government is not forced to continue incurring unfunded state mandated costs. "Rather, the entity is expressly authorized to bring suit to *362 declare such an unfunded mandate *unenforceable*.... [¶] The importance of such a remedy stems from the fundamental legislative prerogative to control appropriations. Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds..." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 63 [266 Cal.Rptr. 139, 785 P.2d 522], original italics, fn. and citations omitted.)

(2a) [Section 17612](#) provides, as to future state-mandated expenditures, an efficacious procedure for the implementation of local agency rights under [article XIII B, section 6](#). Accordingly, as to such

expenditures, the exercise of the constitutional right to avoid involuntary expenditures is not unduly restricted. There is no statutory remedy of *reimbursement* of state-mandated expenditures that could have been prevented after funding has been deleted from the local government claims bill. The courts accordingly must limit the remedy for future expenditures to the procedures established by the Legislature (see *Kinlaw v. State of California supra*, 54 Cal.3d at p. 334) in [section 17612](#).

It follows that any claim to reimbursement of subsequent costs is waived by the failure to seek the relief provided by [section 17612](#). (3) "Generally, 'waiver' denotes the voluntary relinquishment of a known right. But it can also mean the loss of an opportunity or a right as a result of a party's failure to perform an act it is required to perform, regardless of the party's intent to abandon or relinquish the right." (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 315 [24 Cal.Rptr.2d 597, 862 P.2d 158].)

(2b) The Districts could have avoided the imposition of state-mandated costs at any time after their statutory cause of action under [section 17612](#) accrued. Since that cause accrued in September 1985 the Districts waived a nonstatutory *Mandel* remedy for costs incurred thereafter which could have been avoided by timely use of the statutory remedy.

B.

The Districts offer no claim that the trial court erred in denying them a nonstatutory *Mandel* remedy for costs incurred prior to September 1985 if the court correctly had concluded that their cause of action arose at that time. Nor do we discern any basis for such a claim.

(4) The *Mandel* remedy is judicially created to enforce the constitutional right arising under [article XIII B, section 6](#). That claim of right is subject to the four-year limitations period provided in *363Code of Civil Procedure [section 343](#). (See *Griffin v. Internat. Longshoremen's Union* (1952) 109 Cal.App.2d 823, 826 [241 P.2d 552]; cf., e.g., *Gibson v. United States* (9th Cir. 1986) 781 F.2d 1334, 1342.) More than four years had elapsed from September 1985 and the date on which the Districts filed this action.

IV

That leaves the Districts' remaining claims: the accrual of their cause of action was delayed beyond September 1985, the date established by [section](#)

[17612](#); the state is estopped to rely upon any statute of limitations; and the limitations period should be deemed equitably tolled. The Districts offer arguments in support of each of these claims; none is persuasive.

A.

(5) The Districts argue that the cause of action for reimbursement did not accrue in September 1985 because they were required to await the finality of the judgment in *Long Beach* before they could seek a judicial remedy. They reason that once a test claim is filed by another local government entity subject to the same mandate, they must await the resolution of the claim before they can pursue their own claim for reimbursement. The implicit theory is that some affected party must exhaust the administrative remedy provided by statute and that in light of the limitation of the "test claim" procedure to the first claim filed all other affected parties must await the outcome of the test claim. (See, e.g., 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 503, pp. 529-530.)

The critical question is, assuming this theory is correct-how long must they wait?

The Districts suggest their cause of action does not accrue until the statute of limitations has run on the state's right to judicial review of the administrative determination that there is a state mandate or until the final judgment in any litigation brought by the test claimant or the state. This view is insupportable.

The Districts rely upon the holding in *Long Beach* that the state is not subject to issue preclusion regarding an administrative determination that there is a state mandate, under the doctrine of administrative collateral estoppel, until the expiration of the three-year period for judicial review of the decision of the administrative agency. (225 Cal.App.3d at pp. 168-170.) They view *Long Beach* as holding that the "administrative decision" regarding the state mandate was "not final" because it was not yet free from direct *364 attack. They suggest that since the outcome of the "test claim" was not final they were precluded from acting.

The argument founders because issue preclusion has no bearing on the question whether the Districts had a cause of action which accrued, i.e., upon which they could bring suit. (see, e.g., 3 Witkin, Cal. Procedure, *op. cit. supra*, § 351, pp. 380-381.) Under the doctrine of exhaustion of administrative remedies: "

"judicial interference is withheld until the administrative process has run its course." ' ' (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 390 [6 Cal.Rptr.2d 487, 826 P.2d 730], quoting from *United States v. Western Pac. R. Co.* (1956) 352 U.S. 59, 63-64 [1 L.Ed.2d 126, 132, 77 S.Ct. 161], italics added.) That occurred in this case on May 7, 1984, when, in the *Long Beach* case, the Board of Control approved the claim that the desegregation regulations imposed a state mandate and sought guidelines for reimbursement from the Legislature. (225 Cal.App.3d at pp. 168-169.)

As we have explained, [section 17612](#) implies that judicial interference must be withheld until the narrowly prescribed legislative process has also run its course. It does not imply that the judicial forum is unavailable thereafter. [Section 17612](#) is expressly to the contrary.

The Districts cite to [Hoover v. Galbraith](#) (1972) 7 Cal.3d 519 [102 Cal.Rptr. 733, 498 P.2d 981], which held that pending proceedings in a related action, which prevented an effective suit, tolled the running of the statute of limitations. (Also see, e.g., 3 Witkin, Cal. Procedure, *op. cit. supra*, § § 502-505, pp. 528-531.) In *Hoover* the plaintiff tendered a claim as a judgment creditor of a defunct corporation against the former directors who failed to provide for payment of the debt. (7 Cal.3d at pp. 521-523.) A statute provided that the period of limitations began when the liability of the corporation and its directors was established, not when the cause of action on the debt accrues. The Supreme Court held that the statute of limitations was tolled during the pendency of the appeal from the judgment in the plaintiff's favor in the predicate action against the corporation to establish the debt: "He did all that he could to seasonably assert his rights against [the directors] but was prevented by statute from proceeding sooner." (*Id.* at p. 527.)

The Districts liken this case to *Hoover* on the view that "unless the limitations period is tolled, the state will escape responsibility for its failure to reimburse school districts by simply appealing the test claim determination of the right to reimbursement of Title 5 costs until the period has *365 lapsed." The analogy fails. Unlike *Hoover*, the Districts fail to identify any statutory provision barring them from bringing a cause of action under [section 17612](#) as soon as the Legislature deleted funding for the alleged mandate from the local government claims bill.

The Districts also rely on [Phillips v. County of](#)

[Fresno](#) (1990) 225 Cal.App.3d 1240 [277 Cal.Rptr. 531]. A deputy sheriff was denied a disability pension by the county retirement board on the ground he was capable of continuing to work. The sheriff refused to reinstate him believing that he was incapable of working. He sued for reinstatement under a statute providing that the employer could petition for judicial review of the retirement board's decision and "[i]f such petition is not filed or the court enters judgment denying the writ, ... the employer shall reinstate the member to his employment effective as of the day following the effective date of the dismissal." (*Id.* at p. 1244, fn. 2.) The Court of Appeal held that the employer had no duty under this statute to reinstate the employee until the expiration of the 30-day period in which it had a right to seek judicial review of the finding of the retirement board. (*Id.* at p. 1252.) Accordingly, the cause of action under the statute did not accrue until that time had elapsed.

The Districts suggest that their cause of action against the state did not accrue until the finality of the judgment resolving the state's challenge to the finding of the Board of Control in *Long Beach* that the desegregation regulations imposed a state mandate. Once again, the Districts fail to identify an analogous statutory text which provides that their cause of action does not accrue until the lapse of the period of time for challenge of the administrative decision. There is no language in the statutes governing the reimbursement of state-mandated costs which suggests that the duty of the state to fund its mandates does not arise until the lapse of the statutory period for challenging the administrative determination.

The statute of limitations for review of an administrative decision pursuant to [Code of Civil Procedure section 1094.5](#) is three years. ([Code Civ. Proc.](#), § 338; see, e.g., *Long Beach, supra*, 225 Cal.App.3d at p. 169.) As noted, [section 17612](#), subdivision (c), expressly provides that an affected entity may file an action to declare a mandate unenforceable and enjoin its enforcement when "the Legislature deletes from a local government claims bill funding for a mandate" (See generally, [Los Angeles Unified School Dist. v. State of California](#) (1988) 199 Cal.App.3d 686, 692 [245 Cal.Rptr. 140].) Otherwise, the state could force continued expenditures under an unfunded mandate, contrary to [article XIII B, section 6](#), for three years by the simple expedient of failing to challenge the administrative *366 determination that a mandate existed. Justice delayed in this fashion might well be permanently

denied, since recovery would depend upon the happenstance of sufficient unexhausted appropriations of funds reasonably available to satisfy the judgment. A local government which promptly brought an action under [section 17612](#) would vehemently, and we think justly, complain that the Districts' interpretation of the statutory scheme would defeat the purposes of [article XIII B, section 6](#).

B.

(6) The Districts argue that the state is estopped as a matter of law to rely upon a statute of limitations. They rely on the doctrine that an estoppel is recognized where the defendant's conduct is relied upon by the plaintiff who is induced thereby to delay in filing an action. (See, e.g., 3 Witkin, Cal. Procedure, *op. cit. supra*, Actions, § 523, p. 550.) They suggest that the state, in adopting the statutory scheme employing the test claim procedure, represented that it would be governed by the determination of the mandate issue in *Long Beach*. They suggest that the state defendants are disingenuous because they argued against administrative collateral estoppel in *Long Beach* and now assert that the test claim process was complete in 1985.

As we have explained, there is no inconsistency between an absence of administrative collateral estoppel and completion of the administrative test claim process. We discern no implied representation on the part of the state of the character asserted by the Districts in the statutory scheme concerning reimbursement of state-mandated costs, nor in compliance with that scheme by state officials.

Finally, estoppel is ordinarily a question of fact, e.g., with regard to the question of reliance. The Districts identify no evidence in the record which compels the conclusion that they relied upon the conduct of the state in delaying the filing of this action.

C.

(7) The Districts argue that the doctrine of equitable tolling applies so as to extend the limitations period. They cite cases (e.g., [Addison v. State of California \(1978\) 21 Cal.3d 313, 318 \[146 Cal.Rptr. 224, 578 P.2d 941\]](#); [Collier v. City of Pasadena \(1983\) 142 Cal.App.3d 917, 923 \[191 Cal.Rptr. 681\]](#)) which apply the doctrine that "... if the defendant is not prejudiced thereby, the running of the limitations period is tolled '[w]hen an injured person has several legal remedies and, reasonably and in good faith, pursues one.' [Citations]." [Elkins v. Derby \(1974\) 12](#)

[Cal.3d 410, 414 \[115 Cal.Rptr. 641, 525 P.2d 81\]](#).
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The doctrine has no application here. The Districts were not disadvantaged by the passage of time attributable to their good faith error in having earlier pursued a different legal remedy. The Districts never pursued an earlier legal remedy.

Chafing at the limits of existing case law, the Districts invite us simply to transcend them. They suggest we should reward them for not "clog[ging] the courts with numerous individual actions" before the resolution of *Long Beach* and treat them as if they had participated in that litigation under the vague rubric of "virtual representation." The "argument" seems to be that since *Long Beach* might have been suitable for maintenance as a class action, we should treat it as if it had been such. [FN8] This is not a legal argument, it is a request for an ipse dixit.

FN8 The Districts also cite [Nelson v. Lake Hemet Water Co. \(1931\) 212 Cal. 94 \[297 P. 914\]](#), contending that it "stands for the principle that a judicial determination of a common issue regarding an administrative decision is binding for all like parties before the administrative agency." *Nelson* is inapposite. In *Nelson* a corporation contracted to supply water at low rates to persons to whom it had sold land. Attempting to raise the rates it obtained a ruling that it was a public utility from the Railroad Commission. However, in an earlier case some of the landowners successfully petitioned for judicial review and obtained a ruling from the Supreme Court that the company was not a public utility. Then in *Nelson*, the water company took the position that as to those who had not sought judicial review the administrative order determining that it was public utility was still valid. The Supreme Court decided to the contrary: "The decree of the Railroad Commission of 1916 must, therefore, be held to have been overthrown entirely by the judgment in the Allen case, and in so doing the appellant was established as and declared to be a private corporation as to the services being rendered the [landowners who had not originally sought judicial review.]" (*Id.* at p. 98.) *Nelson* only stands for the proposition that certain administrative orders, like certain

judgments, are nonseverable and not subject to partial review. (See, e.g., 9 Witkin, Cal. Procedure, *supra*, Appeal, § 155, pp. 163-164.)

Disposition

The judgment is affirmed.

Nicholson, J., and Raye, J., concurred.

Appellants' petition for review by the Supreme Court was denied June 29, 1995. Mosk, J., was of the opinion that the petition should be granted. ***368**

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Berkeley Unified School Dist. v. State

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REDEVELOPMENT AGENCY OF THE CITY OF
 SAN MARCOS, Plaintiff and Respondent,
 v.
 COMMISSION ON STATE MANDATES,
 Defendant and Respondent; DEPARTMENT OF
 FINANCE,
 Movant and Appellant.

No. D024360.

Court of Appeal, Fourth District, Division 1,
 California.

Mar 7, 1996.

SUMMARY

In administrative mandamus proceedings by a city's redevelopment agency against the Commission on State Mandates to challenge the commission's ruling that the agency was not entitled to reimbursement for housing costs the agency incurred ([Cal. Const., art. XIII B, § 6](#); [Gov. Code, § 17550](#) et seq.; [Health & Saf. Code, § § 33334.2, 33334.3](#)), the trial court denied the Department of Finance's motion to intervene. (Superior Court of San Diego County, No. 686818, Sheridan E. Reed, Judge.)

The Court of Appeal reversed the order denying intervention with directions to the trial court to take such steps as were appropriate in accordance with the appellate opinion and in light of the current procedural status of the underlying administrative mandamus proceedings. The court held that the trial court erred in denying the department's motion to intervene. The department and the commission are not merely two agents of the state representing the same interests. Separate statutory schemes create and govern the department and the commission, and since the department is authorized to sue the commission ([Gov. Code, § § 13070, 17559](#)), it is more like an adversary party than it is an equivalent to the commission itself. Moreover, the commission is a quasi-judicial body that hears both sides of the dispute. In light of the department's right to notice and participation in the administrative hearings before the commission, and in light of its duty to supervise the financial policies of the state (Gov.

Code, § 13070), the relief requested by the agency, subvention of state funds, would have affected the interests of the department. Thus, the department was a real party in interest, and should have been named in the agency's writ petition. It was an indispensable party under [Code Civ. Proc., § 389](#), subd. (a), and it had an interest against the success of the agency on its subvention claim ([Code Civ. Proc., § 387](#), subd. (a)). Also, a ruling in the department's absence could have impaired its ability to protect its interests in the subject matter of the action (*[1189Code Civ. Proc., § 387](#), subd. (b)). The court further held that it was appropriate to adjudicate the denial of the department's intervention motion, notwithstanding that the trial court had issued a telephonic ruling denying the agency's writ petition. An appellate court may proceed to rule upon questions that are capable of repetition, yet evading review, despite the occurrence of events that may have resolved the particular controversy giving rise to the appeal. The issue of a state agency's status as a real party in interest when an unsuccessful claimant sues the commission under [Gov. Code, § 17559](#), was an important legal question in need of clarification. Moreover, in this case, the agency's anticipated appeal from the trial court's ruling made it appropriate to resolve the intervention issue raised by the department. (Opinion by Huffman, J., with Benke, Acting P. J., and McDonald, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--State-mandated Programs-- Establishment of California Commission on State Mandates--Function of Commission.

In enacting [Gov. Code, § 17500](#) et seq., the Legislature established the Commission on State Mandates as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of [Cal. Const., art. XIII B, § 6](#). The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in

accommodating reimbursement requirements in the budgetary process. It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [Cal. Const., art. XIII B, § 6](#), lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establish procedures that exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [Cal. Const., art. XIII B, § 6](#). Thus, the statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists.

(2a, 2b, 2c) State of California § 11--Fiscal Matters--State-mandated Programs--California Department of Finance's Right to Intervene in *1190 Redevelopment Agency's Challenge to Ruling by California Commission on State Mandates.

In administrative mandamus proceedings by a city's redevelopment agency against the Commission on State Mandates to challenge the commission's ruling that the agency was not entitled to reimbursement for housing costs the agency incurred ([Cal. Const., art. XIII B, § 6](#); [Gov. Code, § 17550](#) et seq.; [Health & Saf. Code, § § 33334.2, 33334.3](#)), the trial court erred in denying the Department of Finance's motion to intervene. The department and the commission are not merely two agents of the state representing the same interests. Separate statutory schemes create and govern the department and the commission, and since the department is authorized to sue the commission ([Gov. Code, § § 13070, 17559](#)), it is more like an adversary party than it is an equivalent to the commission itself. Moreover, the commission is a quasi-judicial body that hears both sides of the dispute. In light of the department's right to notice and participation in the administrative hearings before the commission, and in light of its duty to supervise the financial policies of the state ([Gov. Code, § 13070](#)), the relief requested by the agency, subvention of state funds, would have affected the interests of the department. Thus, the department was a real party in interest, and should have been named in the agency's writ petition. It was an indispensable party under [Code Civ. Proc., § 389](#), subd. (a), and it had an interest against the success of the agency on its subvention claim ([Code Civ. Proc., § 387](#), subd. (a)). Also, a ruling in the department's absence could

have impaired its ability to protect its interests in the subject matter of the action ([Code Civ. Proc., § 387](#), subd. (b)).

[See 4 **Witkin**, *Cal. Procedure* (3d ed. 1985) Pleading, § 240 et seq.]

(3) Mandamus and Prohibition § 58--Mandamus--Procedure--Parties--Real Party in Interest--Proof of Service Words, Phrases, and Maxims--Real Party in Interest.

Under [Code Civ. Proc., § 1107](#), an application for the issuance of any prerogative writ is normally accompanied by proof of service on the respondent and the real party in interest. A real party in interest is generally defined as any person or entity whose interest will be directly affected by the proceeding. A real party in interest may be the entity in whose favor the act complained of operates.

(4) Parties § 2--Indispensable Parties--Joinder.

Under [Code Civ. Proc., § 389](#), subd. (a), joinder of a person subject to service of process whose joinder will not deprive the court of jurisdiction is required if (1) *1191 in his or her absence complete relief cannot be accorded among those already parties, or (2) he or she claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may impede his or her ability to protect that interest. Although the court has the power, even in the absence of an indispensable party, to render a decision as to the parties before it, the court may determine for reasons of equity and convenience that it should not proceed with a case where there is an indispensable party absent. Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party.

(5) Appellate Review § 119--Dismissal--Grounds--Mootness--Necessity of Adjudicating State Agency's Motion to Intervene in Proceedings to Challenge Denial of Claim by California Commission on State Mandates.

On appeal from the trial court's order denying the Department of Finance's motion to intervene in administrative mandamus proceedings by a city's redevelopment agency against the Commission on State Mandates to challenge the commission's ruling that the agency was not entitled to reimbursement for housing costs the agency incurred ([Cal. Const., art. XIII B, § 6](#); [Gov. Code, § 17550](#) et seq.; [Health & Saf. Code, § § 33334.2, 33334.3](#)), it was appropriate to adjudicate the denial of the department's

intervention motion, notwithstanding that the trial court had issued a telephonic ruling denying the agency's writ petition. An appellate court may proceed to rule upon questions that are capable of repetition, yet evading review, despite the occurrence of events that may have resolved the particular controversy giving rise to the appeal. The issue of a state agency's status as a real party in interest when an unsuccessful claimant sues the commission under [Gov. Code, § 17559](#), was an important legal question in need of clarification. Moreover, in this case, the agency's anticipated appeal from the trial court's ruling made it appropriate to resolve the intervention issue raised by the department.

COUNSEL

Higgs, Fletcher & Mack, John M. Morris Kenneth H. Lounsbery and James A. Cunningham for Plaintiff and Respondent.

Gary D. Hori and Paula Higashi for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Movant and Appellant. *1192

HUFFMAN, J.

The State of California Department of Finance (DOF) appeals the order of the superior court denying its motion to intervene as an indispensable party in administrative mandamus proceedings brought by the Redevelopment Agency of the City of San Marcos (San Marcos) against the State of California Commission on State Mandates (the Commission). In those mandamus proceedings, San Marcos seeks to have overturned a decision of the Commission that San Marcos was not entitled to reimbursement ("subvention") from state funds for particular housing costs that San Marcos incurred. ([Cal. Const., art. XIII B, § 6](#); [Gov. Code, \[FN1\] § 17550](#) et seq.; [Health and Saf. Code, § § 33334.2, 33334.3](#).) At the administrative hearing before the Commission, DOF appeared and filed opposition to San Marcos's request. The Commission determined that no state-mandated program was involved and, therefore, San Marcos was not entitled to the claimed reimbursement.

FN1 All statutory references (other than to [section 6](#)) are to the Government Code unless otherwise specified.

San Marcos then filed its petition for writ of administrative mandamus to challenge the Commission's decision, but did not name any real parties in interest, only the Commission as respondent. ([Code Civ. Proc., § 1094.5](#).) DOF then sought leave to intervene in the administrative mandamus action, which was denied. ([Code Civ. Proc., § § 387, 389](#).) This appeal ensued. For the reasons to be explained, we conclude the trial court erred in denying DOF leave to intervene as it is an indispensable party and a proper real party in interest in these administrative mandamus proceedings.

I. Procedural Context

(1) In [section 17500](#) et seq., the Legislature established the Commission as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of [article XIII B, section 6](#) (hereafter [section 6](#)) of the California Constitution.

"The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. [Citation.] *1193

" It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [section 6](#) lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes [*sic*] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created... [¶] ... *In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6.*' [Citation.]

"Thus, the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists." ([County of Los Angeles v.](#)

[Commission on State Mandates \(1995\) 32 Cal.App.4th 805, 819 \[38 Cal.Rptr.2d 304\].](#)

5, 1996.

Before both the Commission and the superior court, San Marcos has claimed that it incurred costs to increase or improve the supply of low-income and moderate-income housing due to the requirements of [Health and Safety Code sections 33334.2 and 33334.3](#), and that these provisions are a state mandate constituting a new program or higher level of service. Accordingly, San Marcos argues the Commission should have required reimbursement by the state pursuant to [section 6](#).

"The California Supreme Court has defined what is a 'new program' or 'increased cost,' stating that the drafters and electorate had 'in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.' (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].)" (*County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th at p. 816.)

Pursuant to the statutory scheme, the Commission held a hearing on San Marcos's test claim, which DOF opposed, and denied the claim. San Marcos then filed its petition for administrative mandate against the Commission. DOF filed a motion to intervene. ([Code Civ. Proc., § § 1094.5, 387, 389.](#)) The motion to intervene was denied, the court in part relying on DOF's failure to file reply papers to the opposition by San Marcos. [FN2] While this *1194 appeal of the denial of the motion to intervene has been pending, [FN3] this court denied DOF's petition for writ of supersedeas to stay the trial court proceedings on the merit of the dispute. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (Oct. 25, 1995) D024698 [nonpub. opn.].) On January 26, 1996, the trial court ruled telephonically on the underlying petition for writ of mandate, but no final judgment has yet been entered. [FN4] By letter of January 31, 1996, this court notified the parties it was reconsidering the request for stay previously made and obtained the parties' comments upon the appropriateness of a stay at this time. The Commission and DOF favored imposition of a stay, while San Marcos questioned whether the matter was moot in light of the telephonic ruling, which it anticipates appealing. We issued the stay on February

FN2 DOF applied for leave to file late reply papers, explaining that the opposition papers had been misplaced due to internal office procedure problems at the Attorney General's office. These papers included an outline of the proposed reply. This request and DOF's request to orally argue the denial of its motion to intervene were denied. DOF claims on appeal that the trial court incorrectly construed the absence of a reply memo as an admission of the lack of merit of its original motion, and contends this was also an abuse of discretion. We need not address this argument, however, as we review the ruling itself, not the reasons given for it. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19 [112 Cal.Rptr. 786, 520 P.2d 101].)

FN3 The order denying leave to intervene is separately appealable as a final determination of the issue. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 439 [152 Cal.Rptr. 503].) In general, matters of intervention are not allowed to delay the disposition of the main action. (*Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 151 [224 Cal.Rptr. 425].)

FN4 We obtained the superior court file to evaluate the progress of the underlying proceedings on the petition, and take judicial notice of those orders. ([Evid. Code, § § 452, subd. \(d\), 459, subd. \(a\).](#))

II. Statutory Scheme for State Mandate Determinations

(2a) As stated in [section 17500](#), the Commission is a quasi-judicial body which acts in a deliberative manner to resolve issues arising under [section 6](#). Under applicable regulations, the Commission is required to give notice of claims to DOF, the State Controller's Office, and any other affected state department or agency. ([Cal. Code Regs., tit. 2, § 1187.1](#), subds. (b)(3), (d).) DOF sent representatives to the administrative hearing in this case and provided a written response to the claim. The Commission's staff made a recommendation to deny

San Marcos's test claim and presented argument against it as well. San Marcos thus argues that DOF and the Commission are merely two agents of the state representing the same state interests, and DOF need not be a party to the superior court mandamus proceedings challenging the Commission's decisions. *1195

We disagree. First, separate statutory schemes create and govern DOF and the Commission. Section 13000 et seq. provide for the existence of DOF and for its control by its executive officer, the state director of finance. DOF has general powers of supervision over all matters concerning the financial and business policies of the state. (§ 13070.) DOF is authorized to institute proceedings as deemed proper to conserve the rights and interests of the state. (§ 13070.)

[Section 17559](#) provides similar authorization for court proceedings, providing that a claimant of subvention funds *or the state* may bring administrative mandamus proceedings to set aside a decision of the Commission. Since DOF, an agency of the state, is authorized to sue the Commission, it is evident that it is more like an adversary party that appears before the Commission than it is an equivalent to the Commission itself, which is the claim-adjudicating body and which has no power to oppose the claim except in the defense of its decisions.

Secondly, the case on which the trial court relied to deny intervention, [County of Los Angeles v. State of California](#) (1982) 132 Cal.App.3d 761, 765 [183 Cal.Rptr. 5], was decided under a different statutory scheme, i.e., Revenue and Taxation Code sections which were the predecessor to the current scheme for deciding claims of state-mandated local costs. (Former Rev. & Tax. Code, § 2250 et seq.; [Gov. Code, § 17500](#) et seq.) Specifically, that case involved a decision of the Board of Control to reject a claim for state-mandated local costs. The Court of Appeal noted that under that statutory scheme (former Rev. & Tax. Code, § 2250 et seq.), the Board of Control was to either find in favor of the claimant or reject the claim. If the claim was approved, the board reported that fact to the Legislature for legislative action, and if the board rejected the claim, its decision could be attacked through administrative mandamus proceedings. ([County of Los Angeles v. State of California, supra, 132 Cal.App.3d at p. 765.](#)) The court stated, "It follows that the case at bench involves only the board; the state itself becomes involved only where the board has reported a favorable action to the

Legislature." (*Ibid.*)

The current proceeding is not so simple, because the Commission is a quasi-judicial body which hears both sides of the dispute; it is not merely a statutorily expanded Board of Control. If a current claim is approved, the Commission does not merely report that fact to the Legislature for legislative action, as was done under former Revenue and Taxation Code section 2255. Rather, current section 17557 provides that the Commission shall determine the amount to be subvended for state-mandated local costs it approves. *1196 Section 17561 provides that the state "shall" reimburse local agencies for costs mandated by the state, under specified procedures. Section 17610 et seq. provides for payment of such claims, with the controller to pay claims under \$1 million upon certification by the Commission. (§ 17610, subd. (a).) Under section 17612, larger amounts must be funded by a local government claims bill, and the Legislature is authorized to amend or supplement the parameters and guidelines for mandates contained in that bill. (§ 17612, subds. (a), (b).) Further, under section 17612, subdivision (c), if the Legislature deletes from a local government claims bill the funding necessary for a mandate, the affected local agency may sue for declaratory relief to declare the mandate unenforceable and enjoin its enforcement.

From these provisions, we deduce that the Commission has more power than did the former Board of Control since the state controller is required to pay those smaller claims approved by the Commission under section 17557, subdivision (a), pursuant to section 17610, subdivision (a). Although in [County of Los Angeles v. State of California, supra, 132 Cal.App.3d at page 765](#), the court noted that a losing claimant could bring administrative mandamus proceedings to challenge the Board of Control's decision against it, the court did not explain what a state agency could do to challenge a board decision to allow a claim for reimbursement. Instead, the court appeared to assume that the matter stayed entirely in the legislative arena once the approved claim was reported to the Legislature for action.

Under the current scheme, [section 17559](#) expressly provides that a state agency may bring an action to challenge a Commission decision that is unfavorable to it, i.e., that requires subvention of state moneys. Moreover, the state is involved at an earlier stage under the current scheme, such as when DOF is notified and allowed to participate in the administrative hearings. ([Cal. Code Regs., tit. 2, §](#)

1187.1.) Thus, the authority of *County of Los Angeles* is somewhat outdated and does not stand for the proposition that administrative mandamus proceedings under the current statutory scheme should involve only the Commission and need not allow for participation by a state agency such as DOF. We base this conclusion on the quasi-judicial nature of the Commission and DOF's corresponding role as a party which may appear before it and file suit to challenge its decisions.

III. Real Party in Interest

(3),(2b) Normally, under [Code of Civil Procedure section 1107](#), an application for the issuance of any prerogative writ is accompanied by proof *1197 of service on the respondent and the real party in interest. A real party in interest is generally defined as " 'any person or entity whose interest will be directly affected by the proceeding ...' [Citation.]" (*Sonoma County Nuclear Free Zone '86 v. Superior Court* (1987) 189 Cal.App.3d 167, 173 [234 Cal.Rptr. 357].) A real party in interest may be the entity in whose favor the act complained of operates. (*Ibid.*) For example, in *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 810, the claimant's petition for administrative mandamus named the Commission as respondent and as real parties in interest, the state controller and the state director of finance. (See also Cal. Rules of [Court, rule 56\(a\)](#), regarding writs issued by reviewing courts, requiring the real party in interest to be named where a court or board, etc., is the respondent.)

(4),(2c) Under [Code of Civil Procedure section 389](#), subdivision (a), joinder of a person subject to service of process whose joinder will not deprive the court of jurisdiction is required if "(1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may ... impede his ability to protect that interest" Although the court has the power, even in the absence of an indispensable party, to render a decision as to the parties before it, the court may determine for reasons of equity and convenience that it should not proceed with a case where there is an indispensable party absent. (*Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 500 [157 Cal.Rptr. 190].) "Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party. [Citation.]" (*Id.* at p. 501.)

In light of DOF's right to notice and participation in the administrative hearings before the Commission and in light of its duty to supervise the financial policies of the state (§ 13070), the relief requested by San Marcos, subvention of state funds, would certainly injure or affect the interests of DOF. Under these definitions, DOF was properly a real party in interest, and should have been named as such in the petition. It is an indispensable party under [Code of Civil Procedure section 389](#), subdivision (a).

Moreover, this application for intervention meets the standards of [Code of Civil Procedure section 387](#), subdivisions (a) and (b). [FN5] DOF had an interest against the success of San Marcos on its subvention claim. (*1198 [Code Civ. Proc., § 387](#), subd. (a).) Disposition of the action in DOF's absence could impair its ability to protect its interests in the subject matter of the action. ([Code Civ. Proc., § 387](#), subd. (b).) Because of the Commission's peculiar role as a quasi-judicial agency adjudicating claims against the state, the Commission cannot be said to have adequately represented all the interests of DOF, even though here its staff agreed with DOF's position on the merits. Accordingly, the court erred in denying the application to intervene under [Code of Civil Procedure section 387](#), subdivision (b), and abused its discretion in denying discretionary intervention under [Code of Civil Procedure section 387](#), subdivision (a).

FN5 In pertinent part, [Code of Civil Procedure section 387](#), subdivision (a) allows discretionary intervention in an action or proceeding by any person having an interest in the matter in litigation or in the success of either of the parties or an interest against both. [Code of Civil Procedure section 387](#), subdivision (b) requires the court, upon timely application, to allow intervention by a person claiming an interest relating to the subject matter of the action, who is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless such interest is adequately represented by existing parties.

IV. Current Status of Petition

(5) The procedural posture of this case presents particular problems. Our review of the superior court file shows that the trial court issued a telephonic

ruling January 26, 1996, denying the petition for writ of mandate. In their letter briefs on the appropriateness of a stay at this point, the parties dispute whether, according to an earlier stipulation, oral argument is to be requested on the telephonic ruling on the petition. In any case, the telephonic ruling has not yet been finalized into an appealable judgment, although San Marcos anticipates appealing when that occurs. Currently, DOF would not be considered a party to that appeal. [FN6]

FN6 No motion to vacate the judgment has been brought under [Code of Civil Procedure section 663](#).

Due to the ruling that has been issued on the petition, we could regard the entire matter as moot at this time. However, an appellate court may proceed to rule upon questions that are "'capable of repetition, yet evading review'" ([Sonoma County Nuclear Free Zone '86 v. Superior Court, supra, 189 Cal.App.3d at p. 171](#)), despite the occurrence of events which may have resolved the particular controversy giving rise to the appeal. (*Ibid.*) The issue of a state agency's status as a real party in interest when an unsuccessful claimant sues the Commission under [section 17559](#) is an important legal question in need of clarification. Moreover, in this case, San Marcos's anticipated appeal makes it appropriate to resolve the intervention issue raised by DOF at this time. *1199

Disposition

The stay is vacated and the order denying intervention is reversed with directions to the trial court to take such steps as are appropriate in accordance with the views expressed in this opinion and in light of the current procedural status of the underlying administrative mandamus proceedings. Costs to appellant.

Benke, Acting P. J., and McDonald, J., concurred.
*1200

Cal.App.4.Dist.,1996.

Redevelopment Agency of City of San Marcos v.
Commission on State Mandates

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CITY OF SAN JOSE, Plaintiff and Respondent,
 v.
 THE STATE OF CALIFORNIA, Defendant and
 Appellant; KATHLEEN CONNELL, as
 Controller, etc., et al., Real Parties in Interest and
 Appellants.

No. H014099.

Court of Appeal, Sixth District, California.

Jun 3, 1996.

SUMMARY

The trial court granted a city's petition for a writ of mandate against the state, ruling that [Gov. Code, § 29550](#), which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, established a new program or higher level of service under [Cal. Const., art. XIII B, § 6](#), which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities. (Superior Court of Santa Clara County, No. CV734424, Taketsugu Takei, Judge.)

The Court of Appeal reversed with directions to the trial court to deny the petition. The court held that [Gov. Code, § 29550](#), did not establish a new program or higher level of service under [Cal. Const., art. XIII B, § 6](#), since the shift in funding was not from the state to the local entity but from county to city. At the time [Gov. Code, § 29550](#), was enacted, and long before, the financial and administrative responsibility associated with the operation of county jails and detention of arrestees was borne entirely by the county ([Gov. Code, § 29602](#)). In this respect, counties are not considered agents of the state. Moreover, Cal. Const., art. XIII B, treats cities and counties alike as "local government." Thus, for purposes of mandate subvention analysis, counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the state. Nothing in Cal. Const., art. XIII B prohibits the shifting of costs between local governmental entities.

The court also held that the statute did not shift costs so as to constitute a state "mandate" within the meaning of [Cal. Const., art. XIII B, § 6](#). The pertinent words of the statute state that "a county may impose a fee on a city." Thus, it does not require that counties impose fees on other local entities, but only authorizes them to do so. The court further held that the Legislative Counsel's determination that [Gov. Code, § 29550](#), imposed a state mandated local program was not determinative of the ultimate issue whether the enactment constituted a state mandate *1803 under [Cal. Const., art. XIII B, § 6](#). (Opinion by Bamattre-Manoukian, J., with Cottle, P. J., and Mihara, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 138--Judicial Review and Relief--Appellate Court-- State Mandate Proceedings. [Gov. Code, § 17559](#), requires that the trial court review decisions of the Commission on State Mandates under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, appellate courts are generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions about the meaning and effect of constitutional and statutory provisions. The question whether a statute constitutes a state mandated program is a purely legal question, warranting de novo review.

(2) Constitutional Law § 39--Distribution of Governmental Powers-- Legislative Power.

Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire law-making authority of the state, except the People's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers that are not expressly, or by necessary implication denied to it by the Constitution. Secondly, all intendments favor the exercise of the Legislature's plenary authority: if there is any doubt as to the Legislature's

power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations imposed by the Constitution are to be construed strictly and are not to be extended to include matters not covered by the language used.

(3) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Reimbursement to County for Costs of Booking City Arrestees.

[Gov. Code, § 29550](#), which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not establish a new program or higher level of service under [Cal. Const., art. XIII B, § 6](#), which imposes *1804 limits on the state's authority to mandate new programs or increased services on local governmental entities, since the shift in funding is not from the State to the local entity but from county to city. At the time [Gov. Code, § 29550](#), was enacted, and long before, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county ([Gov. Code, § 29602](#)). In this respect, counties are not considered agents of the state. Moreover, Cal. Const., art. XIII B, treats cities and counties alike as "local government." Thus, for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the state. Nothing in Cal. Const., art. XIII B prohibits the shifting of costs between local governmental entities.

[See 9 **Witkin**, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Reimbursement of County for Booking City Arrestees.

[Gov. Code, § 29550](#), which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, does not shift costs so as to constitute a state "mandate" within the meaning of [Cal. Const., art. XIII B, § 6](#), which imposes limits on the State's authority to mandate new programs or increased services on local governmental entities. The pertinent words of the statute state that "a county may impose a fee on a city." Thus, it does not require that counties impose fees on other local entities, but only

authorizes them to do so. Although as a practical result of the authorization under [Gov. Code, § 29550](#), a city is required to bear costs it did not formerly bear, a mandate cannot be read into language that is plainly discretionary. [Cal. Const., art. XIII B, § 6](#), was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State.

(5) Constitutional Law § 39--Distribution of Governmental Powers-- Legislative Power--Constitutional Restrictions--Strict Construction:State of California § 11--Fiscal Matters--State Mandated Programs.

Rules of constitutional interpretation require that constitutional limitations and restrictions on legislative power are to be *1805 construed strictly and are not to be extended to include matters not covered by the language used. Policymaking authority is vested in the Legislature, and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation. Under these principles, there is no basis for applying [Cal. Const., art. XIII B, § 6](#), which imposes limits on the state's authority to mandate new programs or increased services on local governmental entities, as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

(6) State of California § 11--Fiscal Matters--State Mandated Programs--What Constitutes--Reimbursement of County For Booking City Arrestees

The Legislative Counsel's determination that [Gov. Code, § 29550](#), which authorizes counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities, imposed a state mandated local program was not determinative of the ultimate issue whether the enactment constituted a state mandate under [Cal. Const., art. XIII B, § 6](#). The legislative scheme contained in [Gov. Code, § 17500](#) et seq., makes clear that this issue is to be decided by the State Commission on Mandates. The statutory scheme contemplates that the commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists.

COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Keith Yamanaka, Deputy Attorneys General, Gary D. Hori and Paula A. Higashi for Defendant and Appellant and for Real Parties in Interest and Appellants.

Joan R. Gallo, City Attorney, George Rios, Assistant City Attorney, David J. Stock and Joseph DiCiuccio, Deputy City Attorneys, for Plaintiff and Respondent.

Burke, Williams & Sorensen, J. Robert Flandrick, Deanna L. Ballesteros and Timothy L. Davis as Amici Curiae on behalf of Plaintiff and Respondent.
***1806**

BAMATTRE-MANOUKIAN, J.

In 1979 the voters of the State of California (State) adopted an initiative which added article XIII B to the state Constitution. This followed in the wake of Proposition 13, which had added article XIII A the previous year. [Section 6 of article XIII B](#) imposed limits on the State's authority to mandate new programs or increased services on local governmental entities, whose taxing powers had been severely restricted by Proposition 13. [FN1] Under [section 6](#), whenever the state mandated such a program, the State would be required to reimburse the local entity for the costs of the program.

FN1 We will refer herein to [section 6 of article XIII B of the California Constitution](#) simply as [section 6](#).

The present proceeding arose after the Legislature enacted [Government Code section 29550](#) in 1990 (hereafter, [section 29550](#)). [Section 29550](#) authorized counties to charge cities, and other local entities such as school districts, for the costs of booking into county jails persons who had been arrested by employees of the cities and other entities. The City of San Jose (City) claims that at the time of trial it had incurred expenses of over \$10 million as a result of costs imposed pursuant to [section 29550](#).

City contends [section 29550](#) is a state mandated program under [article XIII B, section 6](#), and that the State must reimburse these costs. The State claims

that [section 29550](#) simply authorizes allocation of booking costs, which formerly were borne solely by the counties, among all the local entities responsible for the arrests; since there is no mandated shifting of costs from state to local government, [section 29550](#) does not come within [section 6](#) and no reimbursement is necessary.

We agree with the state and we therefore reverse the judgment of the superior court which had granted City's petition for a writ of mandate. We direct that the court issue an order denying the petition and enter judgment for the State.

Background

Articles XIII A and XIII B of the Constitution were intended to be complementary provisions with the general purpose of protecting taxpayers by restricting government's power both to levy and to spend taxes for public purposes. ([County of Fresno v. State of California](#) (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235]; [City of Sacramento v. State of California](#) (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) ***1807**

In 1978 article XIII A was added to the California Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." ([County of Fresno v. State of California, supra](#), 53 Cal.3d at p. 486.) In recognition of the fact that Proposition 13 would radically reduce county revenues, the State took steps to assume responsibility for programs previously financed by local government. ([County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].)

The following year, through another statewide election in 1979, article XIII B was added to the Constitution. Article XIII B placed limitations on the ability of both state and local governments to appropriate funds for expenditures, effectively freezing appropriations at both the state and local level. ([Cal. Const., art. XIII B, § 8](#), subd. (h); *id.*, § 2.) Further, [section 6](#) was included in [article XIII B](#) in order to protect shrinking tax revenues of local government from state mandates which would require expenditure of such revenues. ([County of Fresno v. State of California, supra](#), 53 Cal.3d at p. 487.) "[It] was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task." (*Ibid.*)

[Section 6](#) provides: "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 program or increased level of service"

In order to implement [section 6](#), the Legislature enacted [Government Code sections 17500-17630](#). Those sections set forth a procedure for determining whether a particular statute imposes state-mandated costs on a local entity within the meaning of [section 6](#). Section 17525 created the Commission on State Mandates (Commission), which has the sole purpose of hearing and deciding on claims by local government that the local entity "is entitled to be reimbursed by the state for costs" as required by [section 6](#). ([Gov. Code, § 17551](#), subd. (a).)

A local entity seeking reimbursement must first file a claim with the Commission. The Commission then holds a public hearing, takes evidence and decides whether the particular state enactment mandates a "new program or increased level of service." ([Gov. Code, § § 17551, 17553, 17556](#).) The first claim made with respect to a particular statute becomes a "test claim" and its adjudication then governs all subsequent claims based on the same statute. ([Gov. Code, § 17521](#); ***1808***Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332 [285 Cal.Rptr. 66, 814 P.2d 1308].) If the claim is rejected, the local entity may bring an action in administrative mandamus in superior court to challenge the Commission's determination. ([Gov. Code, § 17559](#).)

[Section 29550](#) was enacted in 1990, effective as of July 1 of that year. It states in relevant part: "Notwithstanding any other provision of law, a county may impose a fee upon a city, [or other local entity], for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, ... where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs"

In response to the passage of [section 29550](#), the County of Santa Clara enacted Ordinance No. NS-300.470. It provides that "(a) There is hereby imposed a fee upon every city [or other local entity], equal to the administrative costs, including applicable overhead costs of booking or other processing at any

county jail facility of every person arrested by an employee of such city ... and brought to such county jail facility for booking or detention." The ordinance further provides that "(c) [s]uch fee shall apply to every booking or processing of a person at a county jail facility on and after July 1, 1990."

In October of 1991, City, joined by the Cities of Santa Cruz and Emeryville, filed a test claim with the Commission, claiming that [section 29550](#) imposed on City "costs mandated by the state" ([Gov. Code, § 17551](#), subd. (a)), which were reimbursable under [section 6](#). City alleged it had incurred costs in excess of \$3 million for the first year following the effective date of Ordinance NS-300.470.

The gist of the argument in City's test claim was that counties function as political subdivisions and agents of the State, charged with enforcement of the state's criminal laws. Detaining and booking arrestees is an integral part of this law enforcement process. By authorizing counties to require cities to bear these costs, [section 29550](#) mandated a shift of fiscal responsibility onto local entities, in violation of the purposes underlying [section 6](#).

The Commission heard the matter on May 28, 1992, and issued a proposed statement of decision in which it concluded that [section 29550](#) does not create a reimbursable state-mandated program within the meaning of [section 6](#). The Commission found that "maintenance of jails and detention of prisoners have always been a local matter charged to local government, and that financial and administrative responsibility for the county jail facility are ***1809** borne by the county." The Commission further found that "the state and counties are not synonymous entities for the maintenance of the jails and detention of prisoners.... [¶] In sum, cities and counties are both forms of local government." Therefore, "the imposition of costs authorized by [Government Code section 29550](#) results in a shift or reallocation of funds between local governmental entities that benefit from the county jail facility.... [¶] ... [T]he reimbursement required by article XIII B of the California Constitution does not apply in this situation because that provision is concerned with the relationship between state and local governments; it does not address legislation that affects financial relationships among local governments."

Furthermore, the Commission found that [section 29550](#) was not a statemandated program because "the section is clearly discretionary in empowering a county to impose a booking or other processing fee

upon a city [Government Code section 29550](#) does not require, but merely authorizes, counties to establish booking fees. Each county elects whether to charge cities and other entities for booking and detention services provided at a county jail." The Commission's proposed statement of decision was unanimously adopted by the Commission as its decision on July 23, 1992.

On September 7, 1993, City filed a petition for a writ of mandate in superior court. The petition alleged that in denying City's claim the Commission misinterpreted the Constitution and [section 29550](#) as well as various decisions of California courts. City asked 1) that the Commission's decision be vacated, 2) that the court find that [section 29550](#) mandated a new program for which the State was obligated to reimburse City under [section 6](#), and 3) that the State be ordered to reimburse City for all booking and processing fees incurred to date.

City named both the state and the Commission as respondents and included the state Controller, the Department of Finance and the Director of Finance as real parties in interest. The matter was fully briefed and, following a hearing on October 28, 1993, the court took it under submission.

On November 23, 1993, the superior court issued a decision in which it found that "shifting of the costs of booking and processing arrestees from counties to cities is a new program which is state mandated as opined by the legislative counsel. To hold otherwise is to deny reality and to ignore the substance of the law and follow only the form. The county is the agent of the state and is responsible for administering the state's criminal justice system." Judgment was entered for the City on May 4, 1994, and a peremptory writ of mandate issued granting City the relief requested. *1810

The State and the Commission have appealed. We granted permission to a number of other California cities to file an amicus curiae brief in support of City.

Standard of Review

(1) [Government Code section 17559](#) governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. ([County of Los Angeles v. Commission on State](#)

[Mandates](#) (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304].) However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. ([Greenwood Addition Homeowners Assn. v. City of San Marino](#) (1993) 14 Cal.App.4th 1360, 1367 [18 Cal.Rptr.2d 350].) Here the question whether [section 29550](#) is a state-mandated program within the meaning of [section 6](#) is a purely legal question, warranting de novo review.

(2) In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: "Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly, or by necessary implication denied to it by the Constitution. [Citations.] ... [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used." [Citations.]' " ([Pacific Legal Foundation v. Brown](#) (1981) 29 Cal.3d 168, 180 [172 Cal.Rptr. 487, 624 P.2d 1215], quoting [Methodist Hosp. of Sacramento v. Saylor](#) (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics omitted.)

Discussion

We must determine whether [section 29550](#) constitutes a "new program or higher level of service" which is "mandated" by the State on local government within the meaning intended by section 6 of the Constitution. *1811 (3) As to the first part of the question, whether [section 29550](#) establishes a new program or higher level of service, the leading case of [Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] ([Lucia Mar](#)) provides a useful focus for discussion.

[Lucia Mar](#) involved [Education Code section 59300](#), passed in 1981, which required local school districts to contribute part of the cost of educating district

students at state schools for the severely handicapped. Prior to 1979 the school districts had been required by statute to contribute to the education of students in their districts who attended state schools. (Former Ed. Code, § § 59021, 59121, 59221.) However, those statutes were repealed following the passage of Proposition 13 in 1978, and in 1979 the state assumed full responsibility for funding the schools. When article XIII B was added to the Constitution, effective July 1, 1980, the State had full financial responsibility for operating the state schools, and this was the status when [section 59300](#) was enacted in 1981.

In 1984 the Lucia Mar Unified School District and other school districts filed a test claim asserting that [Education Code section 59300](#) required them to make payments for a " 'new program or increased level of service,' " thus entitling them to reimbursement under section 6. The Commission denied the claim, finding that, although increased costs had been imposed on the district, [section 59300](#) did not establish any " 'new program or increased level of service.' " This decision was affirmed by the superior court, which found that [section 59300](#) did not mandate a new program or higher level of service but simply called for an " 'adjustment of costs.' " ([Lucia Mar, supra, 44 Cal.3d at p. 834.](#)) The Court of Appeal also affirmed, reasoning that a shift in the funding of an existing program is not a "new program."

The Supreme Court reversed the judgment in favor of the State. The court recognized that "... local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state." ([Lucia Mar, supra, 44 Cal.3d at p. 835.](#)) " 'Program,' " as used in article XIII B of the California Constitution, is "one that carries out the 'governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.' " ([Lucia Mar, supra, at p. 835,](#) quoting [County of Los Angeles v. State of California, supra, 43 Cal.3d at p. 56.](#)) Under this definition the high court found that the contributions called for in [Education Code section 59300](#) were used to fund a "program." This was so even though the school district was required only *1812 to contribute funds to the state-operated schools rather than to administer the program itself.

The court found further that the program established

by [Education Code section 59300](#) was a "new program" insofar as the school district was concerned since, at the time it was enacted in 1981, school districts were not required to contribute to the education of their students at the state-operated schools. The court concluded that a shift in funding of an existing program from the state to a local entity constitutes a new program within the meaning of section 6. "The intent of the section [section 6] would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article." ([Lucia Mar, supra, 44 Cal.3d at p. 836,](#) fn. omitted.) [FN2]

FN2 In *Lucia Mar* the case was remanded to the Commission for a determination of the remaining issue, whether [Education Code section 59300](#) in fact "mandated" the school districts to make the called for contributions. ([Lucia Mar, supra, 44 Cal.3d at p. 836.](#))

City and the amici curiae cities contend that the principles expressed in *Lucia Mar* compel the same result here. [Section 29550](#), they argue, is a classic example of the state attempting to shift to local entities the financial responsibility for providing public services. As in *Lucia Mar*, the program is "new" as to City because City has not formerly been required to contribute financially to services provided via the booking process. And, as the *Lucia Mar* court explained, it does not matter that City itself is not required to provide the services; a shift in funding of an existing program from the State to the local level qualifies as a "new program" under section 6.

The flaw in City's reliance on *Lucia Mar* is that in our case the shift in funding is not from the State to the local entity but from county to city. In *Lucia Mar*, prior to the enactment of the statute in question, the program was funded and operated entirely by the state. Here, however, at the time [section 29550](#) was enacted, and indeed long before that statute, the

financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county. In the recent case of [*1813County of Los Angeles v. Commission on State Mandates, supra, 32 Cal.App.4th 805](#), this distinction is the focus of the court's section 6 analysis.

In *County of Los Angeles*, the court of appeal addressed the question whether [Penal Code section 987.9](#) was a state-mandated program for which counties were entitled to be reimbursed. That statute, enacted in 1977, provided that indigent defendants in capital cases could request funds for investigators and experts to assist in the preparation or presentation of the defense. Prior to 1990, costs of this program were reimbursed to the counties by the state by annual appropriations. In the Budget Act of 1990-1991, however, no appropriation was made and counties were obliged to absorb the costs. The County of Los Angeles filed a test claim with the Commission, arguing that the state's withdrawal of funding for [section 987.9](#) costs constituted an unlawful shifting of financial responsibility for the program from the state to the counties, within the meaning of section 6 and in violation of the Supreme Court's holding in *Lucia Mar*.

The Court of Appeal in *County of Los Angeles* decided first that the requirements of [Penal Code section 987.9](#) were not state mandated, but were mandated by the United States Constitution. As a separate basis for its opinion, however, the court found that the State's withdrawal of funds to reimburse [section 987.9](#) costs was not a "new program" under section 6. The court distinguished *Lucia Mar* as follows: "In *Lucia Mar*, the handicapped school program in issue had been operated and administered by the State of California for many years. The court found primary responsibility rested with the state and that the transfer of financial responsibility from the state through state tax revenues to school districts through school district tax and assessment revenues in the school district treasuries imposed a new program on school districts.... [¶] In contrast, the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [section 987.9](#). The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility. There has been no shift of costs from the state to the counties and *Lucia Mar* is, thus, inapposite." ([County](#)

[of Los Angeles v. Commission on State Mandates, supra, 32 Cal.App.4th at p. 817.](#))

This analysis applies equally to our case. It has long been the law in California that " 'the expense of capture, detention and prosecution of persons charged with crime is to be borne by the county' " ([County of San Luis Obispo v. Abalone Alliance \(1986\) 178 Cal.App.3d 848, 859 \[*1814223 Cal.Rptr. 846\].](#)) [Government Code section 29602](#), which was enacted in 1947, provides that "[t]he expenses necessarily incurred in the support of persons charged with or convicted of a crime and committed to the county jail ... and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law are county charges." (See also [Washington Township Hosp. Dist. v. County of Alameda \(1968\) 263 Cal.App.2d 272, 275 \[69 Cal.Rptr. 442\].](#)) The Penal Code similarly provides that county jails are kept by the sheriffs of the counties in which they are located and that the expenses in providing for prisoners in those jails are to be paid out of the county treasury. ([Pen. Code, § § 4000, 4015.](#))

City acknowledges that counties have traditionally borne these expenses, but argues that they do so only in their role as agents of the State. Counties, it is argued, are political subdivisions of the State, organized for the purpose of carrying out functions of state government and advancing state policies, particularly in the area of administration of justice. (See, e.g., [Wilkinson v. Lund \(1929\) 102 Cal.App. 767, 772 \[283 P. 385\]; Gov. Code, § 23002; Marin County v. Superior Court \(1960\) 53 Cal.2d 633, 638-639 \[2 Cal.Rptr. 758, 349 P.2d 526\].](#)) For example, prosecutions take place in county courts but are brought on behalf of the people of the State of California; the state Attorney General has direct supervision over county sheriffs and district attorneys ([Cal. Const., art. V, § 13](#), subd. (b); [Gov. Code, § § 12550, 12560.](#)); and the state asserts substantial control over the operation of county jails. ([Pen. Code, § § 4000 et seq.; 6030 et seq.](#)) Enforcement of the state's criminal laws is a governmental function, the expense of which the state imposes on the county as the administrative arm of the state. (See [Los Angeles Warehouse Co. v. Los Angeles County \(1934\) 139 Cal.App. 368, 371 \[33 P.2d 1058\].](#)) Thus even though the costs of operating county jails and detaining prisoners are paid from the county treasury, City argues those functions are essentially part of a state program. The imposition of those costs on cities therefore constitutes a shift from the state to local government.

This characterization of the county as an agent of the State is not supported by recent case authority, nor does it square with definitions particular to subvention analysis. In [County of Lassen v. State of California \(1992\) 4 Cal.App.4th 1151 \[6 Cal.Rptr.2d 359\]](#), a county sought indemnity from the state for costs of defending against an action by inmates of the county jail alleging inadequate conditions in the jail facility. The county alleged that the State has the ultimate responsibility for setting forth rules and standards governing the operation of jail facilities, and that county jails are used principally to incarcerate persons convicted of or charged with violations of ***1815** state law. Further, the county reasoned that "it [was] the agent of the State in enforcing the State's laws against third persons" and that as State's agent in this regard it was entitled to indemnity from its principal for expenditures or losses incurred in discharge of its authorized duties. (*Id.* at p. 1155.)

The Court of Appeal rejected this theory, squarely holding that the costs of operating county jails, including the capture, detention and prosecution of persons charged with crime are to be borne by the counties. ([County of Lassen v. State of California, supra](#), 4 Cal.App.4th at p. 1156, citing [Pen. Code, § 4000, 4015](#); [Gov. Code, § 29602](#); see also [County of San Luis Obispo v. Abalone Alliance, supra](#), 178 Cal.App.3d at p. 859.) Further, the court observed that the Legislature was entitled to make policy decisions in order to assist counties in bearing the financial burden of certain aspects of running jails, such as providing funding assistance for construction of new facilities; however, the Legislature had not decided to subsidize the operation of existing facilities or costs associated with their operation. Unless the Legislature otherwise provides, counties are required to bear costs associated with operating county jails. ([Gov. Code, § 29602.](#))

City points out that *Lassen* is not directly relevant for our purposes because the court in that case specifically declined to comment on the question whether costs would be reimbursable under section 6. Apparently that theory of recovery had not been pursued below. ([County of Lassen v. State of California, supra](#), 4 Cal.App. 4th at p. 1157.) *Lassen* nonetheless supports State's position that fiscal responsibility for the program in question here rests with the county and not with the State.

More importantly, in analyzing a question involving reimbursement under section 6, the definitions

contained in California Constitution, article XIII B and in the legislation enacted to implement it must be deemed controlling. Article XIII B treats cities and counties alike as "local government." Under [section 8](#), subdivision (d), this term means "any city, county, city and county, school district, special district, authority or other political subdivision of or within the state." Furthermore, [Government Code section 17514](#) defines "costs mandated by the state" to mean any increased costs that a "local agency" or school district is required to incur. "Local agency" means "any city, county, special district, authority, or other political subdivision of the state." (Gov. Code, § 17518.) Thus for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the State. Nothing in article XIII B prohibits the shifting of costs between local governmental entities. ***1816**

(4) Furthermore, we do not believe that the shifting of costs here was a state "mandate," within the meaning of section 6. As the Commission observed, "[t]he pertinent words of the statute state that '... a county *may* impose a fee on a city ...'" Thus [section 29550](#) does not require that counties impose fees on other local entities, but only authorizes them to do so. City claims this is too literal an interpretation of the statutory language. If we take a closer look at the circumstances surrounding the enacting of [section 29550](#), City argues, it becomes clear that it was designed to accomplish indirectly the exact result section 6 was intended to prevent.

[Section 29550](#) was added by section 1 of Senate Bill No. 2557. Section 2 of Senate Bill No. 2557 amended [Government Code section 77200](#) to reduce county revenues by reducing the block grants for trial court funding by approximately 10 percent. (Stats. 1990, ch. 466, pp. 2041-2042.) Moreover, Senate Bill No. No. 2557 was part of the overall state "budget package" of 1990-1991, which contained other shortfalls in county funding. In light of these budget cuts in other areas, City argues, the counties basically had no choice but to pass along booking costs as authorized by [section 29550](#). Moreover, as to City the costs incurred are mandated because Ordinance No. NS-300.470, which is authorized by [section 29550](#), is mandatory.

In support of its position, City submitted excerpts from the county board of supervisors meeting where Ordinance No. NS-300.470 was adopted. These excerpts reflect the generally held belief on the part

of the Board members that [section 29550](#) was passed to enable counties to make up for state revenue cuts in other programs.

We appreciate that as a practical result of the authorization under [section 29550](#), City is required to bear costs it did not formerly bear. We cannot, however, read a mandate into language which is plainly discretionary. Nor are we persuaded by the argument that budget cuts in other programs trigger the subvention requirement in section 6. Funding decisions are policy choices. (*County of Lassen v. State of California*, *supra*, 4 Cal.App.4th at p. 1157.) Section 6 was not intended to entitle local entities to reimbursement for *all* increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State. (*Lucia Mar. supra*, 44 Cal.3d at p. 835.) Section 6 cannot be interpreted to apply to general legislation which has an incidental impact on local agency costs. (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 57.)

(5) A strict construction of section 6 is in keeping with rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power " "are to be construed strictly, and are not to *1817 be extended to include matters not covered by the language used." " (*Pacific Legal Foundation v. Brown*, *supra*, 29 Cal.3d at p. 180; see also *California Teacher's Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1529 [7 Cal.Rptr.2d 699] ["Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation."].) Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

(6) One final point merits brief comment. City contends that the Legislative Counsel's determination that [section 29550](#) imposed a state- mandated local program is deserving of some deference. [Government Code section 17575](#) requires the Legislature's Counsel to determine whether a proposed bill mandates a new program or higher level of service pursuant to section 6. Here Legislative Counsel found "[t]his bill would impose a state- mandated local program by authorizing a county to impose a fee upon other local agencies ... for county costs incurred in processing or booking persons arrested by employees of other local agencies ... and brought to

county facilities for booking or detention." (Legis. Counsel's Dig., Sen. Bill No. 2557, 5 Stats. 1990 (Reg. Sess.) Summary Dig., pp. 170-171.) Under [Government Code section 17579](#), when Legislative Counsel makes such a determination, the enacted statute must contain explicit language providing that "if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with [section 17500](#)) of Division 4 of Title 2 of the Government Code...." (Stats. 1990, ch. 466, § 7, p. 2046.)

These findings and required statements are not determinative, however, of the ultimate issue, whether the enactment constitutes a state mandate under section 6. The legislative scheme contained in [Government Code section 17500](#) et seq. makes clear that this issue is to be decided by the Commission. " It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establish [] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.... In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6.' [Citation.] [¶] Thus *1818 the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists" (*County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 819, quoting from *Kinlaw v. State of California*, *supra*, 54 Cal.3d at p. 333, italics omitted.)

Disposition

We reverse the judgment and direct that the superior court issue an order denying City's petition for a writ of mandate and enter judgment for the State. Costs on appeal are awarded to appellants.

Cottle, P. J., and Mihara, J., concurred.

A petition for a rehearing was denied July 2, 1996, and respondent's petition for review by the Supreme

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53 Cal.Rptr.2d 521, 96 Cal. Daily Op. Serv. 3995, 96 Daily Journal D.A.R. 6437

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Court was denied September 18, 1996. Mosk, J., was
of the opinion that the petition should be granted.

***1819**

Cal.App.6.Dist.,1996.

City of San Jose v. State (Connell)

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COUNTY OF SAN DIEGO, Cross-complainant and Respondent,
v.
THE STATE OF CALIFORNIA et al., Cross-defendants and Appellants.

No. S046843.

Supreme Court of California

Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate ([Code Civ. Proc., § 1085](#)) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, [FN*] Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that [Cal. Const., art. XIII B, § 6](#), required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court of Appeal remanded to the commission to determine the reimbursement

amount and appropriate statutory remedies.

FN* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of [Cal. Const., art. XIII B, § 6](#). The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least \$41 million on the CMS *69 program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c), [Welf. & Inst. Code, § 10000, 17000](#)) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code, § 17000](#), enacted in 1965, rather than the 1982 legislation, and since [Cal. Const., art. XIII B, § 6](#), did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code, § 17000](#), requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While [Welf. & Inst. Code,](#)

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§ 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with George, C. J., Mosk, and Baxter, JJ., Anderson, J., [FN*] and Aldrich, J., [FN†] concurring. Dissenting opinion by Kennard, J.)

FN* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

FN† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.

*70 Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), 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 Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes

upon local governmental agencies.

(2a, 2b) State of California § 12--Fiscal Matters--Appropriations-- Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.

The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3) Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.

The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const., art. VI, § 10. *71 That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

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(4) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code, § 17000](#), enacted in 1965, rather than the 1982 legislation, and since [Cal. Const., art. XIII B, § 6](#), did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code, § 17000](#), requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules ([Welf. & Inst. Code, § 14000.2](#)), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(5a, 5b) State of California § 12--Fiscal Matters--Appropriations-- Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--*72 Eligibility.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new

program, despite the state's assertion that the county had discretion to refuse to provide such care. While [Welf. & Inst. Code, § 17001](#), confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of [Welf. & Inst. Code, § 17000](#) (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although [Welf. & Inst. Code, § 17000](#), does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under [Welf. & Inst. Code, § 17000](#). The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. (Disapproving [Bay General Community Hospital v. County of San Diego](#) (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under [Welf. & Inst. Code, § 17000](#), extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [Welf. & Inst. Code, § 17000](#), but do not qualify for Medi-Cal.)

(6) Public Aid and Welfare § 4--County Assistance--Counties' Discretion.

Counties may exercise their discretion under [Welf. & Inst. Code, § 17001](#) (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose ([Gov. Code, § 11374](#)). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. *73

(7) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local

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Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. [Welf. & Inst. Code, § 17000](#), mandates that medical care be provided to indigents, and [Welf. & Inst. Code, § 10000](#), requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing [Welf. & Inst. Code, § 17000](#), have held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under [Welf. & Inst. Code, § 17000](#), requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving [Cooke v. Superior Court \(1989\) 213 Cal.App.3d 401 \[261 Cal.Rptr. 706\]](#) to the extent it held that Health & Saf. Code, § 1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and

remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county *74 had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), did not mandate a minimum funding requirement. Nor did [Welf. & Inst. Code, former § 16991, subd. \(a\)\(5\)](#), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under [Welf. & Inst. Code, § 16703](#), for 1988-1989. Nothing about this requirement imposed on the county a minimum funding requirement.

(9) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under [Code Civ. Proc., § 1085](#), was not an improper vehicle for challenging the commission's position. Mandamus under [Code Civ. Proc., § 1094.5](#), commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under [Code Civ. Proc., § 1085](#), as one brought under [Code Civ. Proc., § 1094.5](#), and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), was a question of law. Where a purely legal

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question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. *75

COUNSEL

Daniel E. Lungren, Attorney General, Charlton G. Holland III, Assistant Attorney General, John H. Sanders and Richard T. Waldow, Deputy Attorneys General, for Cross-defendants and Appellants.

Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

CHIN, J.

[Section 6 of article XIII B of the California Constitution \(section 6\)](#) requires the State of California (state), subject to certain exceptions, to "provide a subvention of funds to reimburse" local governments "[w]henver the Legislature or any state agency mandates a new program or higher level of service" In this action, the County of San Diego (San Diego or the County) seeks reimbursement under [section 6](#) from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see [Welf. & Inst. Code, § 14063](#)) [FN1] because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted [section 6](#), the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, § § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § § 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

FN1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

To resolve San Diego's claim, we must determine

whether the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See [Kinlaw v. State of California \(1991\) 54 Cal.3d 326, 330, fn. 2 \[285 Cal.Rptr. 66, 814 P.2d 1308\] \(Kinlaw\)](#).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks *76 reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, "the indigent in California were provided health care services through a variety of different programs and institutions." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3 (Preliminary Report).) County hospitals "provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from" other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established "a program of basic and extended health care services for recipients of public assistance and for medically indigent persons." ([Morris v. Williams \(1967\) 67 Cal.2d 733, 738 \[63 Cal.Rptr. 689, 433 P.2d 697\] \(Morris\)](#); *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It "represent[ed] California's implementation of the federal Medicaid program ([42 U.S.C. § § 1396-1396v](#)), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent

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persons. [Citation.]" ([Robert F. Kennedy Medical Center v. Belshé](#) (1996) 13 Cal.4th 748, 751 [55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*)). "[B]y meeting the requirements of federal law," Medi-Cal "qualif [ied] California for the receipt of federal funds made available under title XIX of the Social Security Act." ([Morris, supra, 67 Cal.2d at p. 738.](#)) "Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients" (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code *77 Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements "with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources"].) [FN2]

FN2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, *The Medi-Cal Program: A Brief Summary of Major Events* (Mar. 1990) p. 1 (Summary of Major Events).)

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., *Analysis of 1971-1972 Budget Bill*, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report).) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." ([Morris, supra, 67 Cal.2d at p. 750](#); see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. ([County of Santa Clara v. Hall](#) (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*)). In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: "The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with [s]ufficient funds to provide hospital care for those persons not eligible for Medi-Cal." ([Hall, supra, 23 Cal.App.3d at p. 1061](#), fn. omitted.) Former section 14150.1, *78 which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care." [FN3] ([County of Sacramento v. Lackner](#) (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*)). Under the county option, "the state agreed to assume all county health care costs ... in excess of" the county's payment. (*Id.* at p. 586.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs." [FN4] (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

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FN3 Former section 14150.1 provided in relevant part: "[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county" (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)

FN4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, "a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals Financial responsibility for nonlinked individuals ... remained with the counties." ([Lackner, supra, 97 Cal.App.3d at p. 581.](#))

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately \$76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties

electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons *79 served by a county within the 'option' plan." ([Lackner, supra, 97 Cal.App.3d at p. 589](#); see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, § 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as "[n]oncategorically related needy person [s]." (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, § § 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution."

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(*Kinlaw, supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible *80 under the MIP category (adult MIP's or Medically Indigent Adults). [FN5] (Stats. 1982, ch. 328, § § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § § 19, 86, pp. 6315, 6357; *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

FN5 In this opinion, the terms "adult MIP's" and "Medically Indigent Adults" refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December

24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [*81280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*).)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It provides in relevant part: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. (*County of Fresno, supra*, 53 Cal.3d at p. 487.) Its purpose is to

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preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. (*County of Fresno, supra*, 53 Cal.3d at p. 487; *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 "[e]ssentially" requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Haves v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (*Gov. Code, § 17500* et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (*Gov. Code, § 17521, 17551, 17555*.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (*Gov. Code, § 17557*.) The local agency must then follow certain statutory procedures to *82 obtain reimbursement. (*Gov. Code, § 17558* et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file "an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (*Gov. Code, § 17612*, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under *section 1094.5 of the Code of Civil Procedure*. (*Gov. Code, § 17559*.) *Government Code section 17552* declares that these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6"

III. Administrative and Judicial Proceedings

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los

Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate. [FN6] (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a "pre-existing duty" to provide medical care to the medically indigent under *section 17000*. That section provides in relevant part: "Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." *Section 17000* did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it "was enacted prior to January 1, 1975" Finally, the Commission found no mandate because the 1982 legislation "neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors" pursuant to *section 17001*.

FN6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory *83 writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.) [FN7] In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the

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Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand. [FN8]

FN7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. ([Evid. Code, § § 452](#), subd. (d), 459.)

FN8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would "cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal" that "[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." ([Rev. & Tax. Code, § § 10753.8](#), subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.

B. *The San Diego Action*

1. *Administrative Attempts to Obtain Reimbursement*

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a

member of the Commission. ([Gov. Code, § 17525.](#)) On April 12, the Controller returned the invoice "without action," stating that "[n]o appropriation has been given to this office to allow for reimbursement" of medical costs for adult MIP's and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. *84

2. *Court Proceedings*

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego "from taking any action to reduce or terminate" the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under [Code of Civil Procedure section 1085](#) against the state, the Commission, and various state officers. [FN9] The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

FN9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to "the state" include these officers.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In

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its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs." "Under these circumstances," San Diego asserted, "denial of the County's claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act."

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it "is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991"; (2) that section 6 requires the state "to fully fund the CMS Program" (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the *85 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court

issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate. [FN10] The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

FN10 The judgment dismissed all of San Diego's other claims.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San *86 Diego's mandate claim. According to the [state, in *Kinlaw, supra*, 54 Cal.3d 326](#), we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance" Applying this principle, the state asserts that, since "the test claim litigation was pending" in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

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In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing the state's section 6 obligations, "are available only to local agencies and school districts directly affected by a state mandate" (*Kinlaw, supra, 54 Cal.3d at p. 328.*) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (*Id.* at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues." (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing [Government Code section 17500](#), we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw, supra, 54 Cal.3d at p. 331.*) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (*Id.* at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies" (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that *87 proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code, § 17521.](#)) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues Los Angeles County declined a request from Alameda County that it be included in the test claim" (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]" of the statutory procedure: to "avoid[] multiple proceedings ... addressing the same claim that a reimbursable state mandate has been created." (*Kinlaw, supra, 54 Cal.3d at p. 333.*)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from [article VI, section 10 of the California Constitution](#). (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [93 Cal.Rptr. 234, 481 P.2d 242]; *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [20 Cal.Rptr.2d 246].) That section gives "[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus" ([Cal. Const., art. VI, § 10.](#)) "The jurisdiction thus vested may not lightly be deemed to have been destroyed." (*Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [196 P.2d 884], overruled on another ground in *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [95 Cal.Rptr. 197, 485 P.2d 261].) "While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (*Garrison, supra, at p. 436.*) (2b) Here, we find no statutory provision that either "expressly provide[s]" (*id.* at p. 435) or otherwise "clearly intend[s]" (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following [Dowdall v. Superior Court](#) (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: "Where any trust *88 has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but

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shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust." (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, "the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust." ([Dowdall, supra, 183 Cal. at p. 353.](#)) However, we further observed that "the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof." (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in [Dowdall](#), a court that refuses to defer to another court's primary jurisdiction "is not without jurisdiction." ([Dowdall, supra, 183 Cal. at p. 353.](#)) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See [Collins v. Ramish \(1920\) 182 Cal. 360, 366-369 \[188 P. 550\]](#) [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; [People ex rel. Garamendi v. American Autoplan, Inc. \(1993\) 20 Cal.App.4th 760, 772 \[25 Cal.Rptr.2d 192\] \(Garamendi\)](#) ["rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings

void"]; [Stearns v. Los Angeles City School Dist. \(1966\) 244 Cal.App.2d 696, 718 \[53 Cal.Rptr. 482, 21 A.L.R.3d 164\]](#) [where trial court errs in failing to stay proceedings in *89 deference to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].) [FN11]

FN11 In [Garamendi, supra, 20 Cal.App.4th at pages 771-775](#), the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. ([County of Fresno v. Lehman \(1991\) 229 Cal.App.3d 340, 347 \[280 Cal.Rptr. 310\].](#)) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court. [FN12] (See [Los Angeles Unified School Dist. v. State of California \(1988\) 199 Cal.App.3d 686, 689 \[245 Cal.Rptr. 140\].](#))

FN12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."

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We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [21 Cal.Rptr.2d 453]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*)). However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (*County of Contra Costa, supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also *County of Contra Costa, supra*, 177 Cal.App.3d at pp. 77-78.) *90

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement" Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to *Education Code section 59300*, which "requires a school district to contribute part of the cost of

educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar, supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations]" (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, *Education Code section 59300* took effect. (*Lucia Mar, supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that *Education Code section 59300* requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (*Lucia Mar, supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6" (*Lucia Mar, supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the [] *91 restrictions on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar, supra*, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6" (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [*Education Code*] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—an obligation the school districts did not

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have at the time article XIII B was adopted-it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971- 197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.)) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.))

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.'" " 'In contrast,'" the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under [section 17000](#) and its predecessors. [FN13] The courts have interpreted [section 17000](#) as "impos[ing] upon counties a duty to *92 provide hospital and medical services to indigent residents. [Citations.]" (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is [section 17000](#), not the 1982 legislation. Moreover, because the Legislature enacted [section 17000](#) in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because [section 17001](#) give counties "complete discretion" in setting eligibility and service standards under [section 17000](#), there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

FN13 "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." (*Mooney v. Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*)). [Section 17000](#) is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

A. *The Source and Existence of San Diego's Obligation*

1. *The Residual Nature of the Counties' Duty Under [Section 17000](#)*

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under [section 17000](#). That section creates "the residual fund" to sustain indigents "who cannot qualify ... under any specialized aid programs." (*Mooney, supra*, 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [223 Cal.Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ [17000](#).) [FN14] "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced" (*Kinlaw, supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.)) [FN15]

FN14 See also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526] (construing former [section 2500](#)); *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support"); *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [196 Cal.Rptr. 602]; *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [128 Cal.Rptr. 261] (counties have duty of support "where such support is not

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otherwise furnished").

FN15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under [section 17000](#), the dissent incorrectly relies on [Madera Community Hospital v. County of Madera \(1984\) 155 Cal.App.3d 136 \[201 Cal.Rptr. 768\] \(Madera\)](#) and [Cooke, supra, 213 Cal.App.3d 401](#). (Dis. opn., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under [section 17000](#) only to persons "meeting all eligibility standards for the Medi-Cal program." (*Madera, supra, 155 Cal.App.3d at p. 150*.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of [section 17000](#) but who are ineligible for Medi-Cal. The limit of *Madera's* holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under [section 17000](#). (*Madera, supra, 155 Cal.App.3d at pp. 151-152*.) The Attorney General explained that "[t]he county obligation [under [section 17000](#)] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera, supra, 155 Cal.App.3d at p. 151*.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (*Cooke, supra, 213 Cal.App.3d at p. 411*.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in

1971. Although it initially required counties to *93 contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs. [FN16]

FN16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under [section 17000](#). After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under [section 17000](#). It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under [section 17000](#); the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of [MIP's] to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (*Id.* at p. 571, italics added.) *94

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of [section 17000](#). Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating

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[M]edically [I]ndigent [A]dults from the Medi-Cal program" (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred*." (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under [section 17000](#) for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under [section 17000](#), counties had always borne the responsibility for providing medical care to adult MIP's.

2. *The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal*

To support its argument that it never relieved counties of their obligation under [section 17000](#) to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose

of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." *95 (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "[Section 14150 of the Welfare and Institutions Code](#) is repealed." (Stats. 1979, ch. 282, § 74, p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately." (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, "[u]nder existing law, the counties pay a specified annual share of the cost of" Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that "[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal" (*Ibid.*) The 1979 legislation, the digest continued, "provid[ed] for state assumption of all county costs of Medi-Cal." (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as "temporary." In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as "a long-term local financing measure" (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which "[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State" (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: "Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated

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\$418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs.*" (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal "only temporarily."
*96

3. State Administration of Medical Care for Adult MIP's Under Medi-Cal

The state argues that, unlike the school program before us in *Lucia Mar, supra*, 44 Cal.3d 830, which "had been wholly operated, administered and financed by the state," the program for providing medical care to adult MIP's "has never been operated or administered by" the state. According to the state, Medi-Cal was simply a state "reimbursement program" for care that [section 17000](#) required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was "to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) "In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program." (*California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [106 Cal.Rptr. 555].) Medi-Cal "provided for reimbursement to both public and private health care providers for medical services rendered." (*Lackner, supra*, 97 Cal.App.3d at p. 581.) It further directed that, "[i]nsofar as practical," public assistance recipients be afforded "free choice of arrangements under which they shall receive basic health care." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to "prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care

programs." (§ 14000.2.) Thus, "Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility)." (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons "a choice of medical facilities for treatment," Medi-Cal placed county health care providers "in competition with private hospitals." (*Hall, supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§ § 10720-10721, 14061-14062, 14105, 14203; *Belshé, supra*, 13 Cal.4th at p. 751; *Morris, supra*, 67 Cal.2d at p. 741; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, "[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State *97 responsibility under the Medi-Cal program. [Citation.]" (*Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal "shifted to the state" the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that [Penal Code section 987.9](#), which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 "to reimburse counties for their costs under" the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because [Penal Code section 987.9](#) merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates, supra*, at pp. 814-816.) Thus, the court stated, "[a]ssuming, arguendo, the provisions of [\[Penal Code\] section 987.9](#) [constituted] a new

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program" under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under [Lucia Mar](#), *supra*, 44 Cal.3d 830, the state's "decision not to reimburse the counties for their programs under [Penal Code] section 987.9" imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 817.) The court explained: "In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility." (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a *98 method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced. [FN17]

FN17 Because [County of Los Angeles v. Commission on State Mandates](#), *supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under [section 17000](#). Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: "transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public." [FN18] ([County of Los Angeles](#), *supra*, 43 Cal.3d at p. 56; see also [City of Sacramento v. State of California](#), *supra*, 50 Cal.3d at p. 68 [A "central purpose" of section 6 was "to prevent the state's transfer of the *cost of government* from *itself* to

the local level."].) Accordingly, we view the 1982 legislation as having mandated a "new program" on counties by "compelling them to accept financial responsibility in whole or in part for a program," i.e., medical care for adult MIP's, "which was funded entirely by the state before the advent of article XIII B." [FN19] ([Lucia Mar](#), *supra*, 44 Cal.3d at p. 836.)

FN18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See [County of Los Angeles](#), *supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)

FN19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing [section 17000](#) programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See [County of Los Angeles](#), *supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ' programs' "].)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because [section 17000](#) was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under [section 17000](#) complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded [section 17000](#) obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further" ([Kinlav](#), *supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.)) As we have previously explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (*99[County of Los Angeles](#), *supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it,

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"focus[] on one phase in th[e] shifting pattern of [financial] arrangements" between the state and the counties. Under section 6, the state simply cannot "compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B" [FN20] (*Lucia Mar. supra*, 44 Cal.3d at p. 836.)

FN20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under [section 17000](#) there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

B. County Discretion to Set Eligibility and Service Standards

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds "only on those whom the *county* deems eligible under [§ 17000](#)," "gave the county exclusive authority to determine the level and type of benefits it would provide," and required counties "to include [adult MIP's] in their [§ 17000](#) eligibility **only to the extent state funds were available and then only for 3 years.**" [FN21] (Original emphasis.) According to the state, under [section 17001](#), "[t]he counties have *100 complete discretion over the determination of eligibility, scope of benefits and how the services will be provided." [FN22]

FN21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only

for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to [Section 17000](#) and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

FN22 [Section 17001](#) provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

The state exaggerates the extent of a county's discretion under [section 17001](#). It is true "case law ... has recognized that [section 17001](#) confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]" (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398,

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[695 P.2d 695](#) (*Robbins*.) However, there are "clear-cut limits" to this discretion. (*Ibid.*) (6) The counties may exercise their discretion "only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (*Gov. Code, § 11374.*)" (*Mooney, supra, 4 Cal.3d at p. 679.*) Thus, the counties' eligibility and service standards must "carry out" the objectives of [section 17000](#). (*Mooney, supra, 4 Cal.3d at p. 679*; see also *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304- 305 [261 Cal.Rptr. 545]; § 11000 ["provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program"].) County standards that fail to carry out [section 17000](#)'s objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (*Morris, supra, 67 Cal.2d at p. 737.*) Courts, which have "final responsibility for the interpretation of the law," must strike them down. (*Id.* at p. 748.) Indeed, despite the counties' statutory discretion, "courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]" (*Robbins, supra, 38 Cal.3d at p. 212.*)

1. Eligibility

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP's. As we emphasized in *Mooney*, [section 17000](#) requires counties to relieve and support "all indigent persons lawfully resident therein, "when such persons are not supported and relieved by their relatives" or by some other means." (*Mooney, supra, 4 Cal.3d at p. 678*; see also *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [130 Cal.Rptr. 189].) Moreover, [section 10000](#) declares that the statutory "purpose" of division 9 of the Welfare and Institutions Code, which includes *101 [section 17000](#), "is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed." (Italics added.) Thus, counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of [section 17000](#) who do not receive it from

other sources. [FN23] (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not "defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support"]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly "voided county ordinances which have attempted to redefine eligibility standards set by state statute"].)

FN23 We disapprove *Bay General, supra, 156 Cal.App.3d at pages 959-960*, insofar as it (1) states that a county's responsibility under [section 17000](#) extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [section 17000](#) but do not qualify for Medi-Cal.

Although [section 17000](#) does not define the term "indigent persons," the 1982 legislation made clear that all adult MIP's fall within this category for purposes of defining a county's obligation to provide medical care. [FN24] As part of its exclusion of adult MIP's, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, § § 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended [section 16704](#), subdivision (c)(1), to require that a county board of supervisors, in applying for MISA funds, "assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to [Section 17000](#)" (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended [section 16704](#), subdivision (c)(3), to provide that "[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to [Section 14005.7](#) other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, "counties had to include [Medically Indigent Adults] in their [[section](#)] [17000](#) eligibility" standards. By requiring counties to make all adult MIP's eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible

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under [section 17000](#), the Legislature established that all adult MIP's are "indigent persons" for purposes of the counties' duty to provide medical care under [section 17000](#). Otherwise, the counties could not comply with their promise. *102

FN24 Our conclusion is limited to this aspect of a county's duty under [section 17000](#). We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under [section 17000](#).

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it "operative only until June 30, 1985, unless a later enacted statute extends or deletes that date." [FN25] As we have explained, the subdivision established that adult MIP's are "indigent persons" within the meaning of [section 17000](#) for medical care purposes. As we have also explained, [section 17000](#) requires counties to relieve and support *all* "indigent persons." Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP's from eligibility for medical services, [section 17000](#) has that effect. [FN26]

FN25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, § § 131.1, 131.2, pp. 1079-1080.)

FN26 Given our analysis, we express no opinion about the statement in [Cooke, supra, 213 Cal.App.3d at page 412, footnote 9](#), that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute"

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP's as "indigent persons" within the

meaning of [section 17000](#) for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal program, which covered only categorically linked persons, it "declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered" by Medi-Cal, "whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties' Medi-Cal cost share would not leave counties "with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal," the Legislature also created the county option. ([Hall, supra, 23 Cal.App.3d at p. 1061](#).) Through the county option, "the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases." ([Lackner, supra, 97 Cal.App.3d at p. 586](#).) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all "indigent persons" entitled to medical care under [section 17000](#), and required the state to share in the financial responsibility for providing that care.

In adding adult MIP's to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This *103 description was consistent with prior judicial decisions that, for purposes of a county's duty to provide "indigent persons" with hospitalization, had defined the term to include a person "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." ([Goodall v. Brite \(1936\) 11 Cal.App.2d 540, 550 \[54 P.2d 510\]](#).)

Moreover, the fate of amendments to [section 17000](#) proposed at the same time suggests that, in the Legislature's view, the category of "indigent persons" entitled to medical care under [section 17000](#) extended even *beyond* those eligible for Medi-Cal as MIP's. The June 17, 1971, version of Assembly Bill No. 949 amended [section 17000](#) by adding the following: "however, the health needs of such persons shall be met under [Medi-Cal]." (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971.

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(Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: "The proposed amendment to [Section 17000](#), ... which would have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend [section 17000](#) in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in [section 17000](#)*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under [section 17000](#), we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under [section 17000](#) to continue to provide services to those eligible under [section 17000](#) but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. *104 ([Freedom Newspapers, Inc. v. Orange County Employees Retirement System](#) (1993) 6 Cal.4th 821, 829 [25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of [section 17000](#) and would have taken corrective action if it disagreed with that construction. ([California Assn. of Psychology Providers v. Rank](#) (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under [section 17000](#) to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under [section 17000](#) for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population. [FN27]

FN27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under [section 17000](#). On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under [section 17000](#) extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

2. Service Standards

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. [Section 17000](#) requires in general terms that counties "relieve and support" indigent persons. [Section 10000](#), which sets forth the purpose of the division containing [section 17000](#), declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ [10000](#).) "[Section 17000](#), as authoritatively interpreted,

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mandates that medical care be provided to indigents and [section 10000](#) requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care" (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*)).

Courts construing [section 17000](#) have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just *105 emergency care. [Citation.]" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [18 Cal.Rptr.2d 487]; see also *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under [Section 17000](#)"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather, supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "[section 17000](#) requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health" (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke, supra*, 213 Cal.App.3d at page 404, which held that [section 17000](#) requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain"].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under [Welfare and Institutions Code section 17000](#). [FN28] As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people "is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county." (Stats. 1974, ch. 810, § 3, p. 1765.) The express "purpose and intent" of the act that contained former subdivision (c) was "to insure that the duty of counties to provide health care to indigents [was]

properly and continuously fulfilled." (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992, [FN29] former subdivision (c) "[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county." (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.) Summary Dig., p. 130; see also *Gardner v. County of Los Angeles, supra*, 34 Cal.App.4th at p. 216; *106 *Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided "be comparable to that enjoyed by the nonindigent"].) [FN30] "For the 1990-91 fiscal year," the Legislature qualified this obligation by providing: "nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs." (Stats. 1990, ch. 457, § 23, p. 2013.)

FN28 The state argues that former subdivision (c) is irrelevant to our determination because, like [section 17000](#), it "predate[d] 1975." Our previous analysis rejecting this argument in connection with [section 17000](#) applies here as well.

FN29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

FN30 We disapprove *Cooke, supra*, 213 Cal.App.3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county ... were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions,

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nothing limited its reach to that context.

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate. [FN31]

FN31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

VI. Minimum Required Expenditure

(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least \$41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on [Welfare and Institutions Code section 16990](#), subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's "ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award." *107

Former section 16990, subdivision (a), set forth the financial maintenance-of- effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The

Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at [Rev. & Tax. Code, § 30121](#) et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services. ([Kennedy Wholesale, Inc. v. State Bd. of Equalization \(1991\) 53 Cal.3d 245, 248, 254 \[279 Cal.Rptr. 325, 806 P.2d 1360\]](#).) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, "at a minimum," to "maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year," adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least \$41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds "for allocation to counties *participating* in" the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments "upon application of the county assuring that it will comply with" applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: "To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under [Section 17000](#) or reduce the scope of benefits compared to those which were in effect on November 8, 1988." (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through [Revenue and Taxation Code section 30125](#), which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 "shall be used to supplement existing levels of service and not to fund existing levels of service." (See also Stats. 1989, ch. 1331, § 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their

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existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to *108 seek CHIP funds did so voluntarily. [FN32] Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

FN32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service" Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally "establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA)." (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989- 1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under [section 16703](#) for fiscal year 1988-1989. [FN33] Nothing about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

FN33 Former section 16991, subdivision (a)(5), provided in full: "If the sum of funding that a county received from its allocation pursuant to [Section 16703](#), the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this

section is less than the amount of funding the county received pursuant to [Section 16703](#) in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the sum of funding received from its allocation, pursuant to [Section 16703](#) and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to [Section 16703](#) in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a \$41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., [§ § 10000, 17000](#), and Health & Saf. Code, § 1442.5, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. *109

VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under [Code of Civil Procedure section 1085](#) was an improper vehicle for challenging the Commission's position. It asserts that, under [Government Code section 17559](#), review by administrative mandamus under [Code of Civil Procedure section 1094.5](#) is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under [Code of Civil Procedure section 1085](#) because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. "[M]andamus pursuant to [[Code of Civil Procedure](#)] [section 1094.5](#),

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commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]" (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under [Code of Civil Procedure section 1085](#) as one brought under [Code of Civil Procedure section 1094.5](#) and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (*Woods, supra*, 28 Cal.3d at pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal" (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman, supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh, supra*, 14 Cal.App.4th at p. 1584.) As the state concedes, even under [Code of Civil Procedure section 1094.5](#), a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. *110

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under [Code of Civil Procedure section 170.6](#). We will not review this ruling, however, because it is reviewable only by writ of mandate under [Code of Civil Procedure section 170.3](#), subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under [Code of Civil Procedure section 904.1](#), subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely. [FN34] (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256 Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment. (*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc., supra*, 3 Cal.App.4th at p. 647.)

FN34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees" This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least \$41 million on the CMS

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program in fiscal years 1989-1990 and 1990-1991. The matter is *111 remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); [Welf. & Inst. Code, § § 10000, 17000](#)) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J., [FN*] and Aldrich, J., [FN†]]]]] concurred.

FN* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

FN† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added [article XIII B to the California Constitution, Section 6](#) of this article provides that when the state "mandates a new program or higher level of service on any local government," the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state "may, but need not," provide such reimbursement *if the state mandate was enacted before January 1, 1975.* ([Cal. Const., art. XIII B, § 6](#), subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of [section 6 of article XIII B](#) exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to

the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. ([Mooney v. Pickett \(1971\) 4 Cal.3d 669, 677- 678 *112 \[94 Cal.Rptr. 279, 483 P.2d 1231\].](#)) Since 1965, this obligation has been codified in [Welfare and Institutions Code section 17000](#). (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." ([Welf. & Inst. Code, § 17000](#).) Included in this is a duty to provide medical care to indigents. ([Board of Supervisors v. Superior Court \(1989\) 207 Cal.App.3d 552, 557 \[254 Cal.Rptr. 905\].](#))

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor "were provided in different ways and were funded by the state, county, and federal governments in varying amounts." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program ([42 U.S.C. § 1396](#) et seq.; see [Morris v. Williams \(1967\) 67 Cal.2d 733, 738 \[63 Cal.Rptr. 689, 433 P.2d 697\]](#)), at first limited eligibility to those persons "linked" to a federal categorical aid program by being over age 65, blind, disabled, or a

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member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971- 1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called "noncategorically linked" persons, or "medically indigent persons." (Stats. 1971, ch. 577, § 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at § § 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) *113 Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of "medically indigent persons" that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties through the Medically Indigent Services Account. (Stats. 1982, ch. 328, § § 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, § § 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category "to the extent that state funds are provided" (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego

County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of "medically indigent persons" from Medi-Cal eligibility mandated a "new program or higher level of service" within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. *114 The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against the state for reimbursement of the county's expenditures for medical care to the indigent. [FN1] The majority holds that the county is entitled to such reimbursement. I disagree.

FN1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn., ante, at pp. 86-90.)

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Article XIII B, section 6 of the California Constitution provides: "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 program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*" (Italics added.) [FN2]

FN2 Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Vilorio* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of "[l]egislative mandates enacted prior to January 1, 1975," rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of "medically indigent persons" from Medi-Cal did not meet California Constitution, article XIII B, section 6's requirement of imposing on local government "a new program or higher level of service," and therefore did not entitle the counties to reimbursement from the state under section 6 of article XIII B. The counties' legal obligation to provide medical care arises from section 17000, not from the subsequently enacted *115 1982 legislation. The majority itself concedes that the 1982 legislation merely "trigger[ed] the counties' responsibility to

provide medical care as providers of last resort under section 17000." (Maj. opn., *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under section 17000 to furnish such care. (*Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State

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Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on *116 the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal [that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id.*, § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal. (See *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees.*" (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in

state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources prove insufficient to *117 reimburse the counties under section 6 of article XIII B of the California Constitution for the "new program or higher level of service" of providing medical care to the poor under section 17000. In that event, the state may be required to modify this "new program or higher level of service" in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file "in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c); see maj. opn., *ante.* at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's assumption thereafter of some of the resulting financial burden to the counties did not repeal section 17000's mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation

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that the Legislature does not have under the law.

I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing *118 and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their [section 17000](#) obligations to provide for the poor, and whether to continue to impose the obligations of [section 17000](#) on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under [section 17000](#), counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. *119

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County of San Diego v. State

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REDEVELOPMENT AGENCY OF THE CITY OF
 SAN MARCOS, Plaintiff and Appellant,

v.

CALIFORNIA COMMISSION ON STATE
 MANDATES, Defendant and Respondent;
 CALIFORNIA
 DEPARTMENT OF FINANCE, Intervener and
 Respondent.

No. D026195.

Court of Appeal, Fourth District, Division 1,
 California.

May 30, 1997.

SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under [Gov. Code, § 17550](#) et seq. (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to [Health & Saf. Code, § § 33334.2](#) and [33334.3](#), of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [Cal. Const., art. XIII B, § 6](#). The trial court found that the source of funds used by the agency was exempt, under [Health & Saf. Code, § 33678](#), from the scope of [Cal. Const., art. XIII B, § 6](#). (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under

[Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt *977 from the scope of [Cal. Const., art. XIII B, § 6](#). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, § § 33334.2](#) and [33334.3](#). (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Subvention: Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2) State of California § 11--Fiscal Matters--Subvention--Judicial Rules.

Under [Gov. Code, § 17559](#), review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), is a question of law. On appellate review, the following standards apply: [Gov. Code, § 17559](#), governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court,

the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions about the meaning and effect of constitutional and statutory provisions.

(3a, 3b) State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to [Health & Saf. Code, § § 33334.2](#) and [33334.3](#), which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under [Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of [Cal. Const., art. XIII B, § 6](#) (subvention). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, § § 33334.2](#) and [33334.3](#).

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4) Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.

The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by

the language used.

(5) State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.

The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL

Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent. *979

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

HUFFMAN, J.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) ([Gov. Code, § 17550](#) et seq.), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to [Health and Safety Code \[FN1\] sections 33334.2](#) and [33334.3](#). Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1)(See fn. 2)The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [article XIII B of the California Constitution, section 6](#) (hereafter [section 6](#); all further references to articles are to the California Constitution). [FN2] ([Cal. Const., art. XVI, § 16](#); § 33670.)

FN1 All further statutory references are to the Health and Safety Code unless otherwise

noted.

FN2 " 'Subvention' generally means a grant of financial aid or assistance, or a subsidy. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (*Code Civ. Proc.*, § 1094.5; *Gov. Code*, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to *section 33678* from the scope of *section 6*, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for low and moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of *section 6*, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. *980

I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under *section 6*. (*Gov. Code*, § 17500 et seq.) [FN3] The Commission hearing consisted of oral argument on the points and authorities presented.

FN3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the

Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

(2) Under *Government Code section 17559*, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under *section 6* is a question of law. [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: "*Government Code section 17559* governs the proceeding below and requires that the trial court reviewing the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: "Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to *981 adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]" (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80-81.)

Section 6, part of article XIII B and the provision here at issue, requires that 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 program* or increased level of service" (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here. [FN4]

FN4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also *Gov. Code, § 17514*, definition of "costs mandated by the state," using the same "new program or higher level of service" language of section 6.)

In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California, supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (*982 *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106 [211 Cal.Rptr.

133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (*Health & Saf. Code, § 33000 et seq.*). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (*Health & Saf. Code, § § 33640, 33641, 33670, 33675*). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (*Cal. Const., art. XVI, § 16.*)" (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].) [FN5]

FN5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of lowand moderate-income housing, as well as expanding employment opportunities and improving the social environment.

In *Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives

from tax increment financing do not constitute "proceeds of taxes" subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency*, [supra](#), at p. 1019). [FN6] This ruling was based on [section 33678](#), providing in pertinent part: "This section implements and fulfills the intent ... of Article XIII B and *983Section 16 of Article XVI of the California Constitution. The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of [Section 33670](#) for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ... or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution." (Italics added.)

FN6 The term of art, "proceeds of taxes," is defined in [article XIII B, section 8](#), as follows: (c) " 'Proceeds of taxes' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to [Section 6](#), and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)

In [County of Placer v. Corin](#) (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined "proceeds of taxes" in this way: "Under [article XIII B](#), with the exception of state subventions, the items that make up the scope of 'proceeds of taxes' concern charges levied to raise *general revenues* for the local entity. 'Proceeds of taxes,' in addition to

'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....' ([§ 8](#), subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity." (Italics added.) [FN7]

FN7 The issues before the court in [County of Placer v. Corin](#), [supra](#), 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. [Section 6](#) is not discussed; the court's analysis of other concepts found in [article XIII B](#) is nevertheless instructive.

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under [section 6](#) as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and *984 accordingly we need not discuss the alternate grounds of decision stated by the Commission. [FN8]

FN8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.

III. Housing Fund Allocations: Reimbursable Costs?

1. Arguments

The Agency takes the position that the language of [section 33678](#) is simply inapplicable to its claim for

subvention of funds required to be deposited into the Housing Fund. It points out that [section 6](#) expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante.*) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under [section 33678](#), for purposes of appropriations limitations, tax increment financing is not deemed to be the "proceeds of taxes." (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a "plain meaning" rule to [section 6](#) (see, e.g., *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under [section 6](#), the Agency cites to [Government Code section 17556](#). That section is a legislative interpretation of [section 6](#), creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of [Government Code section 17556](#), subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that [section 6](#) "was designed to protect the tax revenues of local governments from state mandates that *985 would require expenditure of such revenues." (*County of Fresno v. State of California*, *supra*, at p. 487.) Based on the language and history of the measure, the court stated, "Article XIII B of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, [section 6](#) "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*Ibid.*, original italics.) Interpreting [section 6](#), the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources

other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. Interpretation of [Section 6](#)

Here, the Agency contends the authority of *County of Fresno v. State of California*, *supra*, 53 Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of [section 6](#), which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read [section 6](#) in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of [section 6](#), because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California*, *supra*, 15 Cal.4th at p. 81.) A central purpose of [section 6](#) is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) (3b) The related goals of these enactments require us to read the term "costs" in [section 6](#) in light of the enactment as a whole. The "costs" for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the *986 assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016- 1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which [section 6](#) was designed to protect? (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.)

3. Relationship of Appropriations Limitations and Subvention

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In [County of Placer v. Corin, supra](#), 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: "[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.'" [FN9]

FN9 The term of art, "appropriations subject to limitation," is defined in [article XIII B, section 8](#), as follows: [¶] (b) " 'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to [Section 6](#)) exclusive of refunds of taxes." (Italics added.)

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "general revenues for the local entity." ([County of Placer v. Corin, supra](#), 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [sections 33334.2](#) and [33334.3](#). (See [City of Sacramento v. State of California, supra](#), 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially *987 responsible. ([County of Los Angeles v. Commission on State Mandates](#) (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].) [FN10]

FN10 We disagree with respondents that the legislative history of [sections 33334.2](#) and [33334.3](#) is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in [City of San Jose v. State of California, supra](#), 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

For all these reasons, we conclude the same policies which support exempting tax increment revenues from [article XIII B](#) appropriations limits also support denying reimbursement under [section 6](#) for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of [article XIII B](#). ([Brown v. Community Redevelopment Agency, supra](#), 168 Cal.App.3d at pp. 1016-1020.) [Section 6](#) "requires subvention only when the costs in question can be recovered *solely from tax revenues*." ([County of Fresno v. State of California, supra](#), 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable "cost" under [section 6](#). We therefore need not interpret any remaining portions of [section 6](#).

Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.

Appellant's petition for review by the Supreme Court was denied September 3, 1997.

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64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

(Cite as: 55 Cal.App.4th 976)

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Redevelopment Agency of City of San Marcos v.
California Com'n on State Mandates

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H

KATHLEEN CONNELL, as Controller, etc., et al.,
 Petitioners,
 v.
 THE SUPERIOR COURT OF SACRAMENTO
 COUNTY, Respondent; SANTA MARGARITA
 WATER
 DISTRICT et al., Real Parties in Interest.

No. C024295.

Court of Appeal, Third District, California.

Nov. 20, 1997.

SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment

constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program ([Wat. Code, § 35470](#)). Rev. & Tax. Code, former § 2253.2 (now [Gov. Code, § 17556](#)), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public *383 interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment-- Necessity For Further Orders.

A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--

Appealable Judgment.

An appealable judgment or order is a jurisdictional prerequisite to an appeal.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14.]

(3) Appellate Review § 17--Decisions Appealable--Interlocutory Judgment.

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.

In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court *384 is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state- mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]

(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water

Districts to Levy Fees.

Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes § 29--Construction--Language--Legislative Intent.

In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. *385

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.

In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state- mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A.

Cabatic and Susan R. Oie, Deputy Attorneys General,
for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. ([Cal. Const., art. XIII B, § 6](#) (hereafter, [section 6](#)); [FN1] [Gov. Code, § 17500](#) et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting *386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [FN2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207- was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

FN1 [Section 6](#) provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of [Court, rule 213](#) (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations ([Cal. Code Regs., tit. 22, § § 60301-60357](#)) implementing [Water Code section 13521](#), which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." [Section 60313 \[FN3\] of title 22 of the California Code of Regulations](#) prescribed the level of purity required for reclaimed water to be used for landscape irrigation. *387

FN3 California Code of Regulations, [title 22, section 60313](#), initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds,

freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system-the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the [California Code of Regulations, title 22](#) regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of \$17 million.

In September 1978, DHS amended the regulations. The amendment to [California Code of Regulations, title 22, section 60313](#) [FN4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. *388

FN4 [Section 60313 of California Code of Regulations, title 22](#), as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately

disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [FN5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, [FN6] which required reimbursement to local agencies for costs mandated by the state (see now [Gov. Code, § 17561](#) [FN7]), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) [FN8] defining "costs mandated by the state." (See now [Gov. Code, § 17514](#). [FN9]) The test claim also cited [section 6](#) (fn. 1, *ante*). *389

FN5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in [Government Code sections 17521-17522](#).

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." (Stats. 1982, ch. 1586, § 3, p. 6264.)

FN7 [Government Code section 17561](#) provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in [Section 17514](#)...."

FN8 Former Revenue and Taxation Code section 2207 provided in part: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program" (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted

after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp. 4247- 4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 [Government Code section 17514](#) provides: "'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6](#)"

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; [Gov. Code, § 17557](#).)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, [FN10] submitted to the Legislature a statewide cost estimate of \$14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

FN10 Former Revenue and Taxation Code section 2255 provided: "At least twice each

calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.) The current provision is contained in [Government Code section 17600](#), which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article I (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost \$14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including \$945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to [Code of Civil Procedure section 1085](#). The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. *390

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38,

[729 P.2d 2021](#)].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's *391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's

decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. & Tax. Code, § 2253.2, subd. (b)(4); [FN11] Stats. 1982, ch. 734, § 10, p. 2916; [Gov. Code, § 17556](#) [FN12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

FN12 [Government Code section 17556](#) provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy

service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) *392 the state mandate is a program for which reimbursement is due under [County of Los Angeles v. State of California, supra, 43 Cal.3d 46](#); (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

Discussion I. Appealability

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget [FN13] ([Carmel Valley Fire Protection Dist. v. State of California \(1987\) 190 Cal.App.3d 521, 538-541 \[234 Cal.Rptr. 795\]](#))-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the

fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. ([Code Civ. Proc., § 904.1](#); 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § § 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. ([Lyon v. Goss \(1942\) 19 Cal.2d 659, 669-670 \[123 P.2d 111\]](#).)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. *393

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the

judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. ([Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d 521](#)-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.) Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. ([Morehart *394 v. County of Santa Barbara \(1994\) 7 Cal.4th 725, 743-744 \[29 Cal.Rptr.2d 804, 872 P.2d 143\]](#) [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs-which do not raise

issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. Standard of Review

(4) In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. Collateral Estoppel

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. *395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and

found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (*Sacramento I*)). On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) *396

The Supreme Court also rejected the argument that *res judicata* applied. "Of course, *res judicata* and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review.

[Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., [Gov. Code, § 17500](#). [FN14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [*39720 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. ([Gov. Code, § 17559](#); former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

FN14 [Government Code section 17500](#) provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of

the state's responsibilities under [Section 6](#) The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6](#) ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of [Section 6](#)"

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. Authority to Levy Fees

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to [Section 905.2 of the Government Code](#), in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

.....

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [FN15] (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) *398

FN15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in [Government Code section 17556](#). [FN16]

FN16 [Government Code section 17556](#) provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

The facial constitutionality of this provision was upheld in [County of Fresno v. State of California \(1991\) 53 Cal.3d 482 \[280 Cal.Rptr. 92, 808 P.2d 235\]](#). The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with [section 6](#) (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. [Section 6](#) requires subvention only when the costs in question can be recovered solely from tax revenues. ([53 Cal.3d at p. 487.](#)) [Government Code section 17556](#), subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that

are recoverable from sources other than taxes. Such a construction is altogether sound." ([County of Fresno v. State of California, supra, 53 Cal.3d at p. 487.](#))

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as [Water Code section 35470](#), which provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had *399 "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [FN17]

FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where [Water Code section 35470](#) was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in [Water Code section 13512](#), which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge" The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical *400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [sic] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if

you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay"

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. ([Brown v. Kelly Broadcasting Co. \(1989\) 48 Cal.3d 711, 724 \[257 Cal.Rptr. 708, 771 P.2d 406\].](#)) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear *401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" ([Lungren v. Deukmejian \(1988\) 45](#)

[Cal.3d 727, 735 \[248 Cal.Rptr. 115, 755 P.2d 299\].](#))

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action" (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. [Water Code section 35470](#) authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in [Water Code section 35470](#) limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD

"could not" *402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now [Gov. Code, § 17556](#)) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II, supra*, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However,

we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. *403

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See [Section 6, Article XIII D](#)." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.
*404

Cal.App.3.Dist.,1997.

Connell v. Superior Court

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CITY OF RICHMOND, Plaintiff and Appellant,
 v.
 COMMISSION ON STATE MANDATES,
 Defendant and Respondent; DEPARTMENT OF
 FINANCE,
 Real Party in Interest and Respondent.

No. C026835.

Court of Appeal, Third District, California.

May 28, 1998.

SUMMARY

A city filed an administrative mandamus action against the Commission on State Mandates, seeking a determination that an amendment to [Lab. Code, § 4707](#), making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, was a state mandate to which the city was entitled to reimbursement under [Cal. Const., art. XIII B, § 6](#), which applies when a state law establishes a new program or higher level of service payable by local governments. The amendment eliminated local safety members of PERS from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby survivors of a local safety member of PERS who are killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. The trial court denied the petition, finding that the amendment created an increased cost but not an increased level of service by local governments. (Superior Court of Sacramento County, No. 96CS03417, James Timothy Ford, Judge.)

The Court of Appeal affirmed. The court held that although the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did the amendment impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as

applicable to local governments as they are to private employers. Local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. The court also held that assembly bill analyses stating that the amendment was a reimbursable state mandate ([Cal. Const., art. XIII B, § 6](#)), were irrelevant to *1191 the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review, and has provided that the initial determination by Legislative Counsel is not binding on the commission. (Opinion by Morrison, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 138--Judicial Review and Relief--Appellate Court-- Standard--Decision of Commission on State Mandates.

Under [Gov. Code, § 17559](#), a proceeding to set aside a decision of the Commission on State Mandates on a claim may be commenced on the ground that the commission's decision was not supported by substantial evidence. Where the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, review on appeal is generally the same. However, the appellate court independently reviews the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. The question of whether a law is a state-mandated program or a higher level of service under [Cal. Const., art. XIII B, § 6](#), is a question of law that is reviewed de novo.

(2a, 2b, 2c) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Workers' Compensation Death Benefits Payable to Local Safety Members.

An amendment to [Lab. Code, § 4707](#), to eliminate local safety members of the Public Employees'

(Cite as: 64 Cal.App.4th 1190)

Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby the survivors of a local safety member of PERS who is killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter, did not mandate a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under [Cal. Const., art. XIII B, § 6](#). Although the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did it impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. *1192

(3a, 3b) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Purpose.

[Cal. Const., art. XIII B, § 6](#), which requires a subvention of funds to reimburse local governments when a state law mandates a new program or higher level of service on local governments, was intended to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123A.]

(4) Statutes § 43--Construction--Aids--Legislative Analysis--Reimbursement for State Mandates--Legislative Intent.

Assembly bill analyses of an amendment to [Lab. Code, § 4707](#), making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, stating that it was a reimbursable state mandate ([Cal. Const., art. XIII B, § 6](#)), were irrelevant to the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review ([Gov. Code, § § 17500, 17559](#)) and has provided that the initial determination by legislative counsel is not binding on the commission ([Gov. Code, § 17575](#)).

COUNSEL

Nossaman, Guthner, Knox & Elliott, Robert J. Sullivan, Stephen P. Wilman, John T. Kennedy and Scott N. Yamaguchi for Plaintiff and Appellant.

Dwight L. Herr, County Counsel (Santa Cruz), Ronald R. Ball, City Attorney (Carlsbad), Michael G. Colantuono, City Attorney (Cudahay), William B. Conners, City Attorney (Monterey), Jonathan B. Stone, City Attorney (Montebello), Daniel J. McHugh, City Attorney (Redlands), Jeffrey G. Jorgensen, City Attorney (San Luis Obispo), Brian Libow, City Attorney (San Pablo), Howard, Rice, Nemerovski, Canady & Falk and Richard C. Jacobs as Amici Curiae on behalf of Plaintiff and Appellant.

Gary D. Hori and Shawn D. Silva for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Linda A. Cabatic, Assistant Attorney General, Marsha Bedwell and Shelleyanne W. L. Chang, Deputy Attorneys General, for Real Party in Interest and Respondent. *1193

MORRISON, J.

Chapter 478 of the Statutes of 1989 (chapter 478) amended [Labor Code section 4707](#) to eliminate local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS. As a result, the survivors of a local safety member of PERS who is killed in the line of duty receives both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. This proceeding presents the question whether chapter 478 mandates a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under [article XIII B section 6 of the California Constitution](#). We conclude that chapter 478 is not a state mandate requiring reimbursement and affirm the judgment.

Factual and Procedural Background

The workers' compensation system provides for death benefits payable to the deceased employee's survivors. ([Lab. Code, § 4700](#) et seq.) There are also preretirement death benefits under PERS. ([Gov.](#)

[Code, § 21530](#) et seq.) There is a special death benefit under PERS if the death was industrial and the deceased was a patrol, state peace officer/firefighter, state safety officer, state industrial, or local safety member. ([Gov. Code, § 21537.](#)) [Labor Code section 4707](#) provides a coordination or offset for workers' compensation death benefits when the special death benefit under PERS is payable. In such cases, no workers' compensation death benefit, other than burial expenses, is payable, except that if the PERS special death benefit is less than the workers' compensation death benefit, the difference is paid as a workers' compensation death benefit. The total death benefit is equal to the greater of the PERS special death benefit or the workers' compensation benefit, not the combination of the two death benefits.

Prior to [1989, Labor Code section 4707](#) provided in part: "No benefits, except reasonable expenses of burial ... shall be awarded under this division on account of the death of an employee who is a member of the Public Employees' Retirement System unless it shall be determined that a special death benefit ... will not be paid by the Public Employees' Retirement System to the widow or children under 18 years of age, of the deceased, on account of said death, but if the total death allowance paid to said widow and children shall be less than the benefit otherwise payable under this division such widow and children shall be entitled, under this division, to the difference." (Stats. 1977, ch. 468, § 4, pp. 1528-1529.) *1194

Chapter 478 amended [Labor Code section 4707](#) to make technical changes, to provide the death benefit is payable to the surviving spouse rather than to the widow, and to add subdivision (b). Subdivision (b) of [Labor Code section 4707](#) reads: "The limitation prescribed by subdivision (a) shall not apply to local safety members of the Public Employees' Retirement System." (Stats. 1989, ch. 478, § 1, p. 1689.)

In 1992, David Haynes, a police officer for the City of Richmond (Richmond), was killed in the line of duty. Officer Haynes was a local safety member of PERS. His wife and children received the PERS special death benefit; they also received a death benefit under workers' compensation.

Richmond filed a test claim with the Commission on State Mandates (the Commission), contending chapter 478 created a state-mandated local cost. [FN1] Richmond sought reimbursement of the cost of the workers' compensation death benefit, estimated to

be \$295,432. As part of its test claim, Richmond included legislative history of chapter 478, purporting to show a legislative intent to create a reimbursable state mandate.

FN1 " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." ([Gov. Code, § 17521.](#))

The Commission denied the test claim. It found that chapter 478 dealt with workers' compensation benefits and case law held that workers' compensation laws are laws of general application and not subject to [section 6 of article XIII B of the California Constitution](#). It noted the legislative history containing analyses that chapter 478 was a state mandate had been prepared before the issuance of [City of Sacramento v. State of California \(1990\) 50 Cal.3d 51 \[266 Cal.Rptr. 139, 785 P.2d 522\]](#).

Richmond filed a petition for a writ of administrative mandate under [Code of Civil Procedure section 1094.5](#), seeking to compel the Commission to approve its claim. Both the Commission and the Department of Finance, as real parties in interest, responded. The court denied the petition, finding chapter 478 created an increased cost but not an increased level of service by local governments.

Discussion

I

(1) Under [Government Code section 17559](#), a proceeding to set aside the Commission's decision on a claim may be commenced on the ground that the Commission's decision is not supported by substantial evidence. Where *1195 the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, our review on appeal is generally the same. ([County of Los Angeles v. Commission on State Mandates \(1995\) 32 Cal.App.4th 805, 814 \[38 Cal.Rptr.2d 304\]](#).) However, we independently review the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. ([City of San Jose v. State of California \(1996\) 45 Cal.App.4th 1802, 1810 \[53 Cal.Rptr.2d 521\]](#).) The question of whether chapter 478 is a state-mandated program or higher level of service under [article XIII B, section 6 of the California Constitution](#) is a question of law we review de novo. ([45 Cal.App.4th](#)

[at p. 1810.](#))

With certain exceptions not relevant here, "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 program or increased level of service" ([Cal. Const. art. XIII B, § 6](#), (hereafter referred to as [section 6](#))).

In [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46 \[233 Cal.Rptr. 38, 729 P.2d 202\]](#), the Supreme Court considered whether laws increasing the amount employers, including local governments, had to pay in certain workers' compensation benefits were a reimbursable "higher level of service" under [section 6](#). The court looked to the intent of the voters in adopting the constitutional provision by initiative. ([43 Cal.3d at p. 56.](#)) Noting that the phrase "higher level of service" is meaningless alone, the court found it must be read in conjunction with the phrase "new program." The court concluded, "that the drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*)

(2a) Richmond contends chapter 478 meets both tests to qualify as a program under [section 6](#). Richmond contends increased death benefits are provided to generate a higher quality of local safety officers and thus provide the public with a higher level of service. Richmond argues that providing increased death benefits to local safety workers is analogous to providing protective clothing and equipment for fire fighters. In [Carmel Valley Fire Protection Dist. v. State of California \(1987\) 190 Cal.App.3d 521 \[234 Cal.Rptr. 795\]](#), executive orders requiring updated protective clothing and equipment for firefighters were found to be reimbursable state mandates under [section 6](#). The executive orders applied only to fire protection, a peculiarly governmental function. The court noted that police and fire *1196 protection are two of the most essential and basic functions of local government. ([190 Cal.App.3d at p. 537.](#)) Richmond urges that since chapter 478 applies only to local safety members, it is also a state mandate directed to a peculiarly local governmental function.

In [Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d 521](#), the executive order required updated equipment for the fighting of fires. The use of this equipment would result in more effective fire protection and thus would provide a higher level of service to the public. Here chapter 478 addresses death benefits, not the equipment used by local safety members. Increasing the cost of providing services cannot be equated with requiring an increased level of service under a [section 6](#) analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public. ([City of Anaheim v. State of California \(1987\) 189 Cal.App.3d 1478, 1484 \[235 Cal.Rptr. 101\]](#) [temporary increase in PERS benefit to retired employees which resulted in higher contribution rate by local government was not a program or service under [section 6](#)].) In [County of Los Angeles v. State of California, supra, 43 Cal.3d 46](#), the increase in certain workers' compensation benefits resulted in an increase in the cost to local governments of providing services. Nonetheless, the Supreme Court found no "higher level of service" under [section 6](#). Similarly, a new requirement for mandatory unemployment insurance for local government employees, an increase in the cost of providing services, was not a "new program" or "higher level of service" in [City of Sacramento v. State of California, supra, 50 Cal.3d 51, 66-70](#). Chapter 478 fails to meet the first test of a "program" under [section 6](#).

Richmond urges chapter 478 meets the second test of a program under [section 6](#) because it imposed a unique requirement on local governments that was not applicable to all residents and entities within the state. ([County of Los Angeles v. State of California, supra, 43 Cal.3d 46, 56.](#)) Richmond argues that only local governments have "local safety members" and chapter 478 required double death benefits, both PERS and workers' compensation, for this specific group of employees. By requiring double death benefits for local safety members, chapter 478 imposed a unique requirement on local government.

The Commission takes a different view of chapter 478. First, it argues that chapter 478 addresses an aspect of workers' compensation law, which, under [County of Los Angeles v. State of California, supra, 43 Cal.3d 46](#), is a law of general application to which [section 6](#) does not apply. The Commission argues chapter 478 imposes no unique requirement; it merely *1197 eliminates the previous exemption from providing workers' compensation death benefits to local safety members. As such, chapter 478 simply

puts local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit. That chapter 478 affects only local government does not compel the conclusion that it imposes a unique requirement on local government. The Commission contends Richmond's view of chapter 478 is too narrow; the law must be considered in its broader context.

While Richmond's argument has surface appeal, we conclude the Commission's view is the correct one. [Section 6](#) was designed to prevent the state from forcing programs on local government. (3a) "[T]he intent underlying [section 6](#) was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to 'force' programs on localities." (*County of Los Angeles v. State of California*, *supra*, [43 Cal.3d at pp. 56-57.](#)) "The goals of [article XIII B](#), of which [section 6](#) is a part, were to protect residents from excessive taxation and government spending. [Citation.] [Section 6](#) had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*Id.* at p. 61.)

Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. In *City of Sacramento v. State of California*, *supra*, [50 Cal.3d 51](#), the Legislature enacted a statute requiring local governments to participate in the state's unemployment insurance system on behalf of their employees. Local entities made a claim for reimbursement. First, the Supreme Court found that like an increase in workers' compensation benefits, a requirement to provide unemployment insurance did not compel new or increased "service to the public"

at the local level. (*Id.* at pp. 66-67.) The court next addressed whether the new law imposed a unique requirement on local governments.

"Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are *1198 imposed on local governments 'unique[ly],' and not merely as an incident of compliance with general laws. State and local governments, and nonprofit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique.' [¶] The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by imposing new obligations on the public and private sectors *at the same time*. However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local governments, it would have to pay. This was not the intent of our recent decision." (*City of Sacramento v. State of California*, *supra*, [50 Cal.3d 51, 68-69](#), italics in original.)

Richmond argues that [Labor Code section 4707](#), prior to chapter 478, was not an exemption from workers' compensation, relying on *Jones v. Kaiser Industries Corp.* (1987) [43 Cal.3d 552](#) [[237 Cal.Rptr. 568, 737 P.2d 771](#)]. In *Jones*, the plaintiff, a city police officer, was killed in a traffic accident while on duty. His survivors brought suit against the city, contending it has created and maintained a dangerous condition at the intersection where the accident occurred. Plaintiffs argued their suit was not barred by the exclusivity provisions of workers' compensation because they did not receive a workers' compensation death benefit under [Labor Code section 4707](#). The court rejected this argument. First, plaintiffs did receive a benefit under workers' compensation in the form of burial expenses. Further, [Labor Code section 4707](#) was designed not to exclude plaintiffs from receiving workers' compensation benefits, but to assure they received the maximum benefit under either PERS or workers' compensation. ([43 Cal.3d at p. 558.](#))

Under *Jones v. Kaiser Industries Corp.*, *supra*, [43 Cal.3d 552](#), one receiving a special death benefit under PERS rather than the workers' compensation death benefit is not considered exempt from workers'

compensation for purposes of its exclusivity provisions, precluding a suit against the employer for negligence. This conclusion does not affect the analysis that chapter 478, by removing the offset provisions for employers of local safety members, merely makes local governments "indistinguishable in this respect from private employers." (*County of Los Angeles v. State of California*, *supra*, [43 Cal.3d at p. 58.](#))

(2b) Richmond's error is in viewing chapter 478 from the perspective of what the final result is, rather than from the perspective of what the law mandates. (3b) "We recognize that, as is made indisputably clear from *1199 the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 [244 Cal.Rptr. 677, 750 P.2d 318].) (2c) While the result of chapter 478 is that local safety members of PERS now are eligible for two death benefits and local governments will have to fund the workers' compensation benefit, chapter 478 does not mandate double death benefits. Instead, it merely eliminates the offset provisions of [Labor Code section 4707](#). In this regard, the law makes the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. It imposes no "unique requirement" on local governments.

Further, the view that the Legislature was proceeding by stages in enacting chapter 478 finds support in the history of the nearly identical predecessor to chapter 478, Assembly Bill No. 1097 (1987-1988 Reg. Sess.). Assembly Bill No. 1097 was passed in 1988, but was vetoed by the Governor. While the final version of Assembly Bill No. 1097 was virtually identical to chapter 478 in adding subdivision (b) to [Labor Code section 4707](#) (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended Mar. 22, 1988), the bill was very different when it began. The initial version of Assembly Bill No. 1097 repealed [Labor Code section 4707](#) in its entirety. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) introduced Mar. 2, 1987.) The next version made [Labor Code section 4707](#) applicable only to state members of PERS. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended June 15, 1987.) The final version left [Labor Code section 4707](#) applicable to all but local safety members of PERS.

II

(4) As part of its test claim, Richmond included portions of the legislative history of chapter 478 to show the Legislature intended to create a state mandate. This history includes numerous bill analyses by legislative committees that state the bill creates a state-mandated local program.

[Government Code section 17575](#) requires the Legislative Counsel to determine if a bill mandates a new program or higher level of service under [section 6](#). If the Legislative Counsel determines the bill will mandate a new program or higher level of service under [section 6](#), the bill must contain a section specifying that reimbursement shall be made from the state mandate fund, that there is no mandate, or that the mandate is being disclaimed. ([Gov. Code, § 17579.](#)) The Legislative Counsel found that chapter 478 imposed *1200 a state-mandated local program. The enacted statute provided: "Notwithstanding [Section 17610 of the Government Code](#), if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with [Section 17500](#)) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund." (Stats. 1989, ch. 478, § 2, p. 1689.)

One analysis concluded this language was technically deficient because it does not contain a specific acknowledgment that the bill is a state mandate. Reimbursement could not be made until the Commission held a hearing on a test claim. The analysis concluded it "should not be a serious problem because the information provided in this analysis could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission."

Another analysis suggested including an appropriation to avoid the necessity of the Commission having to determine that the bill was a mandate.

Richmond argues this legislative history shows the Legislature intended chapter 478 to be a state mandate and that it should be considered in making that determination. Amici curiae submitted a brief urging that case law holding that legislative history is irrelevant to the issue of whether there is a state-

(Cite as: 64 Cal.App.4th 1190)

mandated new program or higher level of service under [section 6](#) is wrongly decided. [FN2] Amici curiae argue that the intent of the Legislature should control. They further note that the legislative history of chapter 478 shows that the initial opposition of the League of California Cities was dropped after the bill was amended to ensure reimbursement, and that the Governor signed the bill after he had vetoed a similar one that was not considered a state mandate. Amici curiae argue that to ignore the widespread understanding that the bill created a state mandate would undermine the legislative process.

FN2 The California State Association of Counties, and the Cities of Carlsbad, Cudahy, Montebello, Monterey, Redlands, San Luis Obispo and San Pablo filed an amici curiae brief in support of Richmond.

In *County of Los Angeles v. Commission on State Mandates*, *supra*, [32 Cal.App.4th 805](#), plaintiff sought reimbursement for costs incurred under [Penal Code section 987.9](#) for providing certain services to indigent criminal defendants. Plaintiff argued the Legislature's initial appropriation of funds to cover the costs incurred under [Penal Code section 987.9](#) was a final and *1201 unchallengeable determination that [section 987.9](#) constituted a state mandate. The court rejected this argument. "The findings of the Legislature as to whether [section 987.9](#) constitutes a state mandate are irrelevant." ([32 Cal.App.4th at p. 818.](#))

The court, relying on [Kinlaw v. State of California \(1991\) 54 Cal.3d 326](#) [[285 Cal.Rptr. 66, 814 P.2d 1308](#)], found the Legislature had created a comprehensive and exclusive procedure for implementing and enforcing [section 6](#). (*County of Los Angeles v. Commission on State Mandates*, *supra*, [32 Cal.App.4th at pp. 818-819.](#)) This procedure is set forth in [Government Code section 17500](#) et seq. "[T]he statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed." ([32 Cal.App.4th at p. 819.](#))

In *City of San Jose v. State of California*, *supra*, [45 Cal.App.4th 1802, 1817-1818](#), the court relied upon *County of Los Angeles v. Commission on State Mandates*, *supra*, [32 Cal.App.4th 805](#), in rejecting

the argument that the determination by Legislative Counsel that a bill imposed a state mandate was entitled to deference.

Amici curiae contend these cases are wrong because they ignore the cardinal rules of statutory construction that courts must construe statutes to conform to the purpose and intent of lawmakers and that the intent of the Legislature should be ascertained to effectuate the purpose of the law.

Amici curiae are correct that " 'the objective of statutory interpretation is to ascertain and effectuate legislative intent.' [Citation.]" ([Trope v. Katz \(1995\) 11 Cal.4th 274, 280](#) [[45 Cal.Rptr.2d 241, 902 P.2d 259](#)].) Where such intent is not clear from the language of the statute, we may resort to extrinsic aids, including legislative history. ([People v. Coronado \(1995\) 12 Cal.4th 145, 151](#) [[48 Cal.Rptr.2d 77, 906 P.2d 1232](#)].) Here, however, the issue is not the interpretation of [Labor Code section 4707](#). The parties agree it requires that the survivors of local safety members killed due to an industrial injury receive both the special death benefit under PERS and the workers' compensation death benefit. Rather, the issue is whether [section 6](#) requires reimbursement for the costs incurred by local governments under chapter 478. The Legislature has entrusted that determination to the Commission, subject to judicial review. ([Gov. Code, § § 17500, 17559.](#)) It has provided that the initial determination by Legislative Counsel is not binding on the Commission. (*Id.*, [§ 17575.](#)) Indeed, the language of chapter 478 recognizes that the determination of whether the bill is a state mandate lies with *1202 the Commission. It reads, "if the Commission on State Mandates determines that this act contains costs mandated by the state, ..." (Stats. 1989, ch. 478, § 2, p. 1689, italics added.) While the legislative history of chapter 478 may evince the understanding or belief of the Legislature that chapter 478 created a state mandate, such understanding or belief is irrelevant to the issue of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates*, *supra*, [32 Cal.App.4th 805, 819.](#))

Disposition

The judgment is affirmed.

Puglia, P. J., and Nicholson, J., concurred.

Appellant's petition for review by the Supreme Court was denied August 19, 1998. *1203

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75 Cal.Rptr.2d 754, 63 Cal. Comp. Cases 733, 98 Cal. Daily Op. Serv. 4644, 98 Daily Journal D.A.R. 6559
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Cal.App.1.Dist.,1998.

City of Richmond v. Commission on State Mandates

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CITY OF EL MONTE et al., Plaintiffs and
 Appellants,
 v.
 COMMISSION ON STATE MANDATES,
 Defendant and Respondent; DEPARTMENT OF
 FINANCE,
 Real Party in Interest and Respondent.

No. C025631.

Court of Appeal, Third District, California.

July 27, 2000.

SUMMARY

The California Commission on State Mandates determined that state legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) ([Health & Saf. Code, § 33681](#) et seq.) did not constitute a reimbursable state mandate under [Cal. Const., art. XIII B, § 6](#). The trial court denied a petition for a writ of administrative mandate, challenging the commission's determination, filed by a city, which had to lend funds to the city redevelopment agency for payment of its ERAF contributions. (Superior Court of Sacramento County, No. 95CS02704, Cecily Bond, Judge.)

The Court of Appeal affirmed. The court held that contributions by redevelopment agencies to the ERAF did not constitute a reimbursable state mandate under [Cal. Const., art. XIII B, § 6](#). A utilization of local property taxes in support of schools and community colleges was not a "new program" imposed by the state within the meaning of [Cal. Const., art. XIII B, § 6](#). Hence, requiring a shift of a portion of redevelopment agency funds to local schools did not create a reimbursable state mandate. In addition, subvention is required only when the costs can be recovered solely from proceeds of taxes ([Cal. Const., art. XIII B, § 8](#), subd. (c)), and, pursuant to [Health & Saf. Code, § 33678](#), a redevelopment agency's tax increment may not be deemed to be the proceeds of taxes within the meaning of Cal. Const., art. XIII B. The court also held that the city was accorded a fair hearing before

the commission. Since the issue presented to the commission was one of law, not fact, the city failed to show cognizable prejudice from any procedural errors. Further, since the commission's decision was the legally correct resolution of the case, it had to be affirmed on appeal, regardless of procedural errors ([Cal. Const., art. VI, § 13](#)). (Opinion by Scotland, P. J., with Davis and Morrison, JJ., concurring.) *267

HEADNOTES

Classified to California Digest of Official Reports

(1) Municipalities § 36--Fiscal Affairs--
 Appropriation--Taxation-- Constitutional
 Restrictions--Proposition 13--State
 Subvention:Counties § 15-- Fiscal Matters.

Cal. Const., art. XIII A (Prop. 13), does not preclude a local government from imposing or raising special taxes, but the supermajority vote requirement makes it more difficult to do so. This was intended to inhibit a local government from avoiding property tax limitations by shifting the tax burden to other forms of tax. Cal. Const., art. XIII B, prohibits a government entity from spending more on programs funded with taxes than it spent in the prior year, adjusted for inflation and population changes. In view of these limits on taxing and spending, [Cal. Const., art. XIII B, § 6](#), requires the state, with certain exceptions, to provide a subvention of funds for the costs of any new program or higher level of service imposed upon local governments by the Legislature or any state agency.

(2) Public Housing and Redevelopment § 5--
 Redevelopment--Tax Increment Financing--
 Exemption From State Constitutional Reimbursement
 and Subvention Requirements.

[Health & Saf. Code, § 33678](#), which declares tax increment financing by redevelopment agencies to be exempt from the state reimbursement and subvention requirements of Cal. Const., art. XIII B, is constitutionally valid. Cal. Const., art. XIII B, is vague and uncertain with respect to tax increment financing, and the legislative clarification in [Health & Saf. Code, § 33678](#), is neither arbitrary and unreasonable, nor repugnant to the literal language of Cal. Const., art. XIII B.

(3a, 3b) State of California § 11--Fiscal Matters--Reimbursable State Mandate:Public Housing and Redevelopment § 5--Redevelopment--Whether Educational Contributions Are Reimbursable.

In a city's mandamus proceeding, the trial court correctly determined that state legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) ([Health & Saf. Code, § 33681](#) et seq.) did not constitute a reimbursable state mandate under [Cal. Const., art. XIII B, § 6](#). A utilization of local property taxes (acquired by the agencies through tax increment financing) in support of schools and community colleges was not a new program imposed by the state within the meaning of [Cal. Const., art. XIII B, § 6](#). The ERAF legislation was, in part, an exercise of the Legislature's authority to apportion property tax revenues. The shift of a portion of redevelopment agency funds to local schools did not create *268 a reimbursable state mandate. In addition, subvention is required only when the costs can be recovered solely from proceeds of taxes ([Cal. Const., art. XIII B, § 8](#), subd. (c)), and, pursuant to [Health & Saf. Code, § 33678](#), a redevelopment agency's tax increment may not be deemed to be the proceeds of taxes within the meaning of Cal. Const., art. XIII B.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4) State of California § 11--Fiscal Matters--Reimbursable State Mandate.

A "reimbursable state mandate" is not commensurate with any additional costs that a local government may be required to bear. The additional expense to a local agency arising as an incidental effect of a law that applies generally to all entities is not the type of expense that the voters had in mind when they adopted [Cal. Const., art. XIII B, § 6](#). A reimbursable mandate is created only when the state imposes on a local government a new program, or an increased level of service under an existing program.

(5) Administrative Law § 121--Judicial Review--Scope of Review--Questions of Law.

A city was accorded a fair hearing before the California Commission on State Mandates, which determined that state legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) ([Health & Saf. Code, § 33681](#) et seq.) did not constitute a reimbursable state mandate under [Cal. Const., art. XIII B, § 6](#). Because the commission made its determination based on pure questions of

law, it was not required to set forth findings. Further, since the issue presented to the commission was one of law, not fact, the city failed to show cognizable prejudice with respect to its assertions that the commission failed to hear its claim within a timely manner and that the commission improperly accepted position papers from the state Department of Finance. Finally, since the commission's decision was the legally correct resolution of the case, it had to be affirmed on appeal, regardless of procedural errors ([Cal. Const., art. VI, § 13](#)).

COUNSEL

Law Offices of William D. Ross, William D. Ross, Carol B. Sherman and J. Robert Flandrick for Plaintiffs and Appellants.

Gary D. Hori and Camille Shelton for Defendant and Respondent. *269

Daniel E. Lungren and Bill Lockyer, Attorneys General, Linda A. Cabatic and Pete Southworth, Deputy Attorneys General, for Real Party in Interest and Respondent.

SCOTLAND, P. J.

In this appeal from the trial court's denial of a petition for writ of administrative mandate, we are called upon to determine whether legislation requiring local redevelopment agencies to contribute to a local Educational Revenue Augmentation Fund (ERAF) constituted a reimbursable state mandate under [article XIII B, section 6](#) of California's Constitution.

As we shall explain, we agree with the trial court that the legislation did not constitute a reimbursable state mandate and that plaintiffs were accorded a fair hearing before the Commission on State Mandates. Accordingly, we shall affirm the judgment.

Background

The Legislature has "found and declared that there exist in many communities blighted areas which constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state." ([Health & Saf. Code, § 33030](#).) Thus, it is the policy of our state to utilize all appropriate means to promote the sound

development and redevelopment of blighted areas. ([Health & Saf. Code, § 33037.](#)) To that end, the Legislature enacted the Community Redevelopment Law. ([Health & Saf. Code, § 33000](#) et seq.)

The redevelopment process begins when a community forms a redevelopment agency and, after appropriate proceedings, designates an area as a redevelopment or project area. (See [Bell Community Redevelopment Agency v. Woosley \(1985\) 169 Cal.App.3d 24, 27 \[214 Cal.Rptr. 788\].](#)) The agency then must formulate a redevelopment plan that is adopted by the local government body. (*Ibid.*) The agency has broad powers to implement the redevelopment plan, but lacks the authority to impose a tax to finance its efforts. (*Ibid.*) In this respect, a redevelopment agency is permitted to accept financial or other assistance from any public or private source, may borrow money, and may issue bonds. (*Ibid.*; [Health & Saf. Code, §§ 33600-33602.](#))

The most important method of financing employed by a redevelopment agency is what is known as tax increment financing. (See [*270 Health & Saf. Code, § 33670](#) et seq.) This method of financing is explicitly authorized by [article XVI, section 16 of our state Constitution](#). Tax increment financing presupposes that redevelopment will increase property values, and hence increase the tax base, of properties in the project area. Pursuant to a tax increment financing plan, the taxing agencies that are entitled to an allocation of taxes paid upon properties in a redevelopment area continue to receive an allocation based upon the assessment roll last equalized prior to the effective date of the ordinance approving the redevelopment plan. ([Cal. Const., art. XVI, § 16](#), subd. (a).) Tax receipts in excess of that amount are paid into a special fund of the redevelopment agency for the payment of "the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." ([Cal. Const., art. XVI, § 16](#), subd. (b).) In other words, the taxing agency receives the same amount of money it would have received under the assessed valuation of the project area in the absence of redevelopment, and the redevelopment agency receives the increment attributable to new construction and revitalization. (*Bell Community Redevelopment Agency v. Woosley, supra, 169 Cal.App.3d at p. 27.*)

The Community Redevelopment Law and tax

increment financing have long been a part of California law. ([Brown v. Community Redevelopment Agency \(1985\) 168 Cal.App.3d 1014, 1017 \[214 Cal.Rptr. 626\].](#)) However, some uncertainty with respect to redevelopment agencies and tax increment financing arose as the result of the addition of articles XIII A and XIII B to our state Constitution, and their failure to specifically address community redevelopment. (*Bell Community Redevelopment Agency v. Woosley, supra, 169 Cal.App.3d at p. 29.*)

California Constitution, article XIII A, added in 1978 and familiarly known as Proposition 13, imposes taxing limitations upon local governments. In addition to limiting property taxes to one percent of full market value, "to be collected by the counties and apportioned according to law to the districts within the counties," article XIII A imposes a requirement of a two-thirds majority vote for the imposition of special taxes. ([Cal. Const., art. XIII A, § 1](#), subd. (a), 4.) (1) [Article XIII A](#) does not preclude a local government from imposing or raising special taxes, but the supermajority vote requirement makes it more difficult to do so. ([Huntington Park Redevelopment Agency v. Martin \(1985\) 38 Cal.3d 100, 105 \[211 Cal.Rptr. 133, 695 P.2d 220\].](#)) This was intended to inhibit a local government from avoiding property tax limitations by shifting the tax burden to other forms of tax. (*Ibid.*) *271

California Constitution, article XIII B, added in 1979, imposes government spending limitations upon the state and local governments. With respect to local governments, the limitation is accomplished by restricting total annual appropriations to the appropriations limit for the prior year, adjusted for the change in the cost of living and the change in population, except as otherwise provided in that article. ([Cal. Const., art. XIII B, § 1.](#)) The essential thrust of [article XIII B](#) is to prohibit a government entity from spending more on programs funded with taxes than it spent in the prior year, adjusted for inflation and population changes. (*Huntington Park Redevelopment Agency v. Martin, supra, 38 Cal.3d at p. 107.*) In view of the local tax limitations imposed by [article XIII A](#) and the spending limitations imposed upon local governments by [article XIII B](#), [article XIII B](#) includes [section 6](#) which, with certain exceptions, requires the state to provide a subvention of funds for the costs of any new program or higher level of service imposed upon local governments by the Legislature or any state agency. ([County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46, 61 \[233 Cal.Rptr. 38, 729 P.2d 202\].](#))

In view of the uncertainty with respect to tax increment financing after the addition of articles XIII A and XIII B to our state Constitution, the Legislature enacted [Health and Safety Code section 33678](#) as urgency legislation. (added by Stats. 1980, ch. 1342, § 1, pp. 4750-4751, eff. Sept. 30, 1980; amended by Stats. 1993, ch. 942, § 35, pp. 5380-5381.) Subdivision (a) of that section provides: "This section implements and fulfills the intent of this article and of Article XIII B and [Section 16 of Article XVI of the California Constitution](#). The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of [Section 33670](#) [the tax increment] for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for redevelopment activity, as defined in subdivision (b) of this section, shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution."

(2) The constitutional validity of [Health and Safety Code section 33678](#) was considered in *Brown v. Community Redevelopment Agency*, *supra*, *272 [168 Cal.App.3d 1014](#). There, it was contended that funds received by a redevelopment agency pursuant to a tax increment funding plan are "proceeds of taxes" subject to the appropriations limit of California Constitution, article XIII B. ([168 Cal.App.3d at p. 1018](#).) The Court of Appeal disagreed, finding article XIII B to be vague and uncertain with respect to tax increment financing, and finding the legislative clarification in [Health and Safety Code section 33678](#) to be neither arbitrary and unreasonable, nor repugnant to the literal language of article XIII B. ([168 Cal.App.3d at p. 1020](#).) The same conclusion was reached by another Court of Appeal in a virtually contemporaneous decision. (*Bell Community Redevelopment Agency v. Woosley*, *supra*, [169 Cal.App.3d at pp. 33-34](#); see also *Redevelopment Agency v. Commission on State Mandates* (1997) [55 Cal.App.4th 976, 987](#) [[64 Cal.Rptr.2d 270](#)].)

It was upon this background that, in 1992, the Legislature enacted what the parties refer to as the ERAF legislation. (Stats. 1992, chs. 699, 700, pp. 3081-3125.) ERAF stands for Educational Revenue Augmentation Fund. The ERAF legislation, which was enacted in response to a shortfall in state revenues and a period of severe fiscal difficulty brought about by the well-known economic recession of that time period (Stats. 1992, ch. 699, § 36, p. 3114; Stats. 1992, ch. 700, pp. 3081-3125, § 5, p. 3125), affected local government entities, including redevelopment agencies. Because the dispute in this case involves only the effect of the ERAF legislation on redevelopment agencies, we shall confine our discussion of it to redevelopment agencies.

In chapter 699, the ERAF legislation amended [Health and Safety Code section 33020](#) to include, in the definition of "redevelopment," payments to school and community college districts in the 1992-1993 fiscal year. (Stats. 1992, ch. 699, § 3, p. 3084.) [Health and Safety Code section 33681](#) was enacted to require a redevelopment agency to make certain payments to local school and community college districts. (Stats. 1992, ch. 699, § 7, pp. 3087-3089.) This version of [Health and Safety Code section 33681](#), which was superseded before it became operative, would have required redevelopment agencies to pay an amount equal to 15 percent of all taxes allocated to it during the 1992-1993 fiscal year, less applicable credits, to each school and community college district that is an affected taxing entity of the agency. (Stats. 1992, ch. 699, § 7, pp. 3087-3089.) [FN1] Section 33683 was added to the Health and Safety Code to provide that sums paid pursuant to *273 the ERAF legislation with property tax revenues are to be deducted from the property tax dollars deemed to have been received by the agency for purposes of determining whether the tax allocation and financing limitations in the redevelopment plan ([Health & Saf. Code, § § 33333.2, 33333.4](#)), or pursuant to any agreement or court order, have been reached (Stats. 1992, ch. 699, § 7, pp. 3089-3090).

FN1 In support of this provision, the Legislature enacted [Health and Safety Code section 33680](#), which contains certain findings and declarations. (Stats. 1992, ch. 699, § 7, pp. 3086-3087.) Among other things, the Legislature found that the purposes of the Community Redevelopment Law are dependent upon an adequate and financially solvent school system, that

redevelopment agencies historically have provided financial assistance to schools which benefit and serve the project area, that the reduced funds available to the state made it necessary for redevelopment agencies to provide additional assistance to schools, and that the payments to be made to schools and community college districts are of benefit to redevelopment project areas.

In chapter 699, the ERAF legislation also enacted [Revenue and Taxation Code section 97.03](#), dealing with the allocation of property tax revenues. (Stats. 1992, ch. 699, § 12, pp. 3093-3096.) [FN2] In relevant part, in subdivision (d), that provision established in each county an ERAF into which certain tax receipts would be paid and then allocated to school and community college districts in the county.

FN2 Property taxes are collected by counties and then apportioned and disbursed pursuant to legislative formulae. ([Cal. Const., art. XIII A, § 1](#); [Rev. & Tax. Code, § 95](#) et seq.; see [Bell Community Redevelopment Agency v. Woosley, supra, 169 Cal.App.3d at p. 32.](#))

In chapter 700, the ERAF legislation enacted a different version of [Health and Safety Code section 33681](#), which superseded the one enacted in chapter 699. (Stats. 1992, ch. 700, § 1.5, pp. 3115-3116.) The new version provided a formula for determining a redevelopment agency's contribution to schools and community college districts and provided for deposit of such contributions into the county ERAF fund established pursuant to [Revenue and Taxation Code section 97.03](#). The measure includes subdivision (c), which provides: "In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low and moderate-income fund as of July 1, 1992, may be used for this purpose." (Stats. 1992, ch. 700, § 1.5, p. 3116.) Subdivision (e) declares such sums to be an indebtedness of the redevelopment project to which they relate, payable through tax increment financing. (Stats. 1992, ch. 700, § 1.5, p. 3116.) This version of [section 33681](#) added subdivision (f) to

provide: "It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the *274 financing or refinancing, in whole or in part, of the community's redevelopment projects pursuant to [Section 16 of Article XVI of the California Constitution](#)." [FN3]

FN3 Chapter 700 included a new and superseding version of [Revenue and Taxation Code section 97.03](#). (Stats. 1992, ch. 700, § 4, pp. 3120-3125.) With respect to redevelopment agencies, the new version was identical to the version in chapter 699.

The effect of the 1992 ERAF legislation was to require redevelopment agencies to make a payment into the county ERAF fund for distribution to local school and community college districts. The City of El Monte Community Redevelopment Agency claims that, pursuant to the 1992 ERAF legislation, it was required to allocate \$118,138.57 for that purpose. The City of El Monte asserts that, as a result of an agency shortfall, it was required to lend funds to the agency for payment of its ERAF contributions. [FN4] Pursuant to Government Code procedures (§ 17500 et seq.), El Monte filed test claim No. CSM-4439 with the Commission on State Mandates (the Commission), seeking state reimbursement for these costs.

FN4 Although the ERAF legislation also required cities, counties, and other taxing entities to contribute to the local ERAF fund, the City of El Monte does not contest any direct effect upon it in this proceeding. The City of El Monte joins this litigation solely by reason of the loan of funds to its redevelopment agency. For convenience, we will adopt the nomenclature of the appellants and refer to them collectively as El Monte.

In 1993, while claim No. CSM-4439 was pending, the Legislature enacted additional ERAF legislation. (Stats. 1993, chs. 68, 566, pp. 939-955, 2812-2814.) The effect of the 1993 ERAF legislation was to require a redevelopment agency to make payments into the county ERAF fund during the 1993-1994 and 1994-1995 fiscal years. (Stats. 1993, ch. 68, § 1, 2, 4, pp. 940-944, amending [Health & Saf. Code, § § 33020, 33680](#), and adding § 33681.5.) [FN5] El

Monte filed test claim No. CSM-4465, asserting that it had incurred state-mandated costs in the amount of \$34,638.52 for the 1993-1994 fiscal year as the result of the 1993 ERAF legislation.

FN5 In chapter 566, the 1993 ERAF legislation added [section 33681.3 to the Health and Safety Code](#) to provide an equitable adjustment for certain redevelopment agencies for their payments during the 1992-1993 fiscal year. (Stats. 1993, ch. 566, § 1, p. 2812.) This provision is beneficial to the agencies that qualify and is not at issue here.

The Commission adopted a lengthy decision denying claim No. CSM-4439. It subsequently adopted a decision denying claim No. CSM-4465 on the same grounds. In denying the claims, the Commission concluded (1) the ERAF legislation did not impose a new program or higher level of service on redevelopment agencies; (2) tax increment revenues are not "proceeds of taxes" within the meaning of [article XIII B, section 6 of the Constitution](#), and the provisions of [article XIII B](#), including [section 6](#), are not applicable to *275 tax increment financing; (3) the payments to an ERAF fund by redevelopment agencies represent an allocation of funds among local government entities rather than a shift in costs from the state to a local entity, and the decision in [Lucia Mar Unified School Dist. v. Honig \(1988\) 44 Cal.3d 830 \[244 Cal.Rptr. 677, 750 P.2d 318\]](#) is inapplicable because in this instance long-standing educational responsibilities remain with local school districts; and (4) the ERAF legislation does not impose reimbursable costs on a redevelopment agency because, pursuant to [Health and Safety Code section 33683](#) (Stats. 1992, ch. 699, § 7, pp. 3089-3090), the agency may recoup its costs by excluding such payments from its tax receipt and financing limitations.

El Monte petitioned for a writ of administrative mandate. ([Code Civ. Proc., § 1094.5](#); [Gov. Code, § 17559](#).) The trial court upheld the Commission's decision. The court rejected El Monte's procedural attacks upon the Commission proceedings, holding El Monte had failed to substantiate that it was denied a fair hearing or otherwise prejudiced by an irregularity. With respect to the substantive claim, the court found dispositive the Commission's conclusion that the ERAF legislation represented an allocation of taxes among local entities rather than a shift of state

responsibilities to local agencies. Judgment was entered denying the petition for a writ of mandate.

Discussion I. State Mandate

Before considering El Monte's substantive contentions, it will be useful to identify certain matters that are not in issue.

First, El Monte notes that in the Commission proceedings the Department of Education admitted that payments to county ERAF funds were distributed to local school and community college districts with an equal reduction of state payments to those districts. This factual admission is consistent with the ERAF legislation. In enacting this legislation, the Legislature specified that it was dealing with a current shortfall in state revenues and a period of severe fiscal difficulty. (Stats. 1992, ch. 699, § 36, p. 3114; Stats. 1992, ch. 700, § 5, p. 3125.) In support of the ERAF legislation, the Legislature adopted [Health and Safety Code section 33680](#), subdivision (c), which provides among other things: "[B]ecause of the reduced funds available to the state to assist schools and community colleges which benefit and serve redevelopment project areas during the 1992-93 fiscal year, it is necessary *276 for redevelopment agencies to make additional payments to assist the programs and operations of these schools and colleges in order to ensure that the objectives stated in this section can be met." (Stats. 1992, ch. 669, § 7, p. 3087.) It is undeniable that a purpose behind the ERAF legislation was to compel redevelopment agencies to provide support for schools and community colleges during a period when the state was unable to adequately provide such support. However, the validity of the state's reduction of its payments to school districts is not in issue. El Monte lacks standing to complain of the state's reduced payments to schools. ([County of Los Angeles v. Sasaki \(1994\) 23 Cal.App.4th 1442, 1449 \[29 Cal.Rptr.2d 103\]](#).) Moreover, [article XVI, sections 8 and 8.5 of our state Constitution](#), added by Proposition 98 at the November 1988 General Election, upon which El Monte places heavy reliance, recognizes the historical fluidity of the fiscal relationship between local governments and schools, which we will discuss, *post*. Accordingly, the fact that the ERAF legislation was accompanied by a reduction of state payments to local school and community college districts is not dispositive.

Second, we are not here concerned with the validity of the ERAF legislation. As noted previously, the

Legislature made certain findings and declarations in support of this legislation. (See p. 272, fn. 1, *ante*.) The Legislature found that it is appropriate for redevelopment agencies to provide assistance to local schools and community colleges, that such support serves the purposes of community redevelopment, and that such assistance may properly be treated as indebtedness payable through tax increment financing within the meaning of [article XVI, section 16 of our state Constitution](#). ([Health & Saf. Code, § 33680](#).) El Monte does not challenge the validity of those determinations or of the ERAF legislation. In fact, El Monte emphasizes that the validity of the legislation is not in issue. (3a) The sole issue presented with respect to the ERAF legislation is whether the compelled contributions constitute a state mandate for which a subvention of funds is required pursuant to [article XIII B, section 6 of the Constitution](#).

Third, we are not concerned with the Legislature's determination, embodied in [Health and Safety Code section 33678](#), that redevelopment agencies and tax increment financing pursuant to [article XVI, section 16 of the Constitution](#) are not subject to the local government appropriations limitations of [article XIII B](#). As we have noted, that determination has been upheld in the Courts of Appeal. (*Bell Community Redevelopment Agency v. Woosley*, *supra*, [169 Cal.App.3d at pp. 33-34](#); *Brown v. Community Redevelopment Agency*, *supra*, [168 Cal.App.3d at p. 1020](#).) El Monte does not ask us to reject those decisions and find that redevelopment agencies and tax increment financing are in fact subject to the government spending limitations of [article XIII B, *277](#)

El Monte asks only that we find the subvention requirements of [section 6 of article XIII B of the California Constitution](#) are applicable in this instance.

[California Constitution, article XIII B, section 6](#) provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing

legislation enacted prior to January 1, 1975."

In addressing the meaning and scope of this provision, we do not write on a clean slate; fortunately, we have the benefit of extensive judicial consideration of the matter. When we consider El Monte's claim in light of existing authorities, we are satisfied, on two alternative grounds, that the ERAF legislation did not constitute a reimbursable state mandate with respect to redevelopment agencies. We will discuss these grounds seriatim.

A. Allocation of Revenues

(4) A reimbursable state mandate is not commensurate with any "additional costs" that a local government may be required to bear. (*County of Los Angeles v. State of California*, *supra*, [43 Cal.3d at pp. 55-57](#).) The additional expense to a local agency arising as an incidental impact of a law that applies generally to all entities is not the type of expense that the voters had in mind when they adopted [section 6 of California Constitution, article XIII B](#). (*Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d at p. 835](#).)

A reimbursable mandate is created only when the state imposes on a local government a new program or an increased level of service under an existing program. (*Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d at p. 835](#).)

(3b) In *Lucia Mar Unified School Dist. v. Honig*, upon which El Monte places primary reliance, the Legislature had enacted a measure to require local school districts to contribute part of the costs of educating pupils from the district at state schools for the severely handicapped. Before and after the measure, the state retained complete administrative control over the special schools. Before the measure, the state had borne the entire cost of operating *278 such schools. Under these circumstances, the Supreme Court found that the measure constituted a "new program" within the meaning of the subvention requirement because otherwise the requirement "would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government" (*Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d at p. 836](#).) [FN6]

FN6 In *Lucia Mar Unified School Dist. v. Honig*, the Supreme Court did not decide

that the measure constituted a reimbursable state mandate. The possible existence of reasonable alternatives to the use of state-operated schools left open the question whether the contributions were mandated, and the court deferred to the Commission for resolution of that issue. (*Lucia Mar*, *supra*, [44 Cal.3d at pp. 836-837.](#))

The decision in *Lucia Mar Unified School Dist. v. Honig* turned on the dual factors that (1) before the measure, the state had borne the entire cost of the special schools, and (2) before and after the measure, the state retained administrative control over the special schools. ([44 Cal.3d at p. 836](#), especially fn. 8 [noting the decision involved the "new program" rather than "higher level of service" aspect of the subvention requirement]; see also [County of San Diego v. State of California \(1997\) 15 Cal.4th 68, 99, fn. 20](#) [[61 Cal.Rptr.2d 134, 931 P.2d 312](#)].) As will be seen, neither of these factors is applicable in this case.

The matter of funding education is a shared responsibility between state and local taxpayers. (See, e.g., [Ed. Code, § 14000](#).) The division of this responsibility has been in a state of flux since 1971, as the result of certain developments, including the decision in [Serrano v. Priest \(1971\) 5 Cal.3d 584](#) [[96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187](#)] holding that equal protection requires equal funding of schools, and the addition to the Constitution of article XIII A limiting local property taxation. (See [California Teachers Assn. v. Hayes \(1992\) 5 Cal.App.4th 1513, 1526-1527](#) [[7 Cal.Rptr.2d 699](#)]; see also [County of Los Angeles v. Sasaki](#), *supra*, [23 Cal.App.4th at pp. 1450-1452](#) [noting that by fiscal year 1991-1992, the share of local property tax revenue allocated to K-14 schools had dropped to 35 percent from the 53 percent that it had been in the 1977-1978 fiscal year (at p. 1452)].)

Nevertheless, it is clear that, before the enactment of the ERAF legislation, a substantial, although variable, portion of local property tax revenues were utilized for the support of schools. In this respect, a utilization of local property taxes in support of schools and community colleges is not a "new program" within the meaning of the decision in *Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d 830](#).

El Monte cites [Butt v. State of California \(1992\) 4 Cal.4th 668, 681](#) [[15 Cal.Rptr.2d 480, 842 P.2d 1240](#)]

for the proposition that education is the *279 ultimate responsibility of the state. The principle is undeniable, and indeed this court has noted and relied upon the state's plenary authority over education. ([California Teachers Assn. v. Hayes](#), *supra*, [5 Cal.App.4th at pp. 1524-1525.](#)) However, that principle does not resolve the issue presented in this case. (See [City of San Jose v. State of California \(1996\) 45 Cal.App.4th 1802, 1814-1815](#) [[53 Cal.Rptr.2d 521](#)].)

Only the state is sovereign and, in a broad sense, all local governments, districts, and the like are subdivisions of the state. ([Allied Amusement Co. v. Bryam \(1927\) 201 Cal. 316, 320](#) [[256 P. 1097](#)]; [Petition East Fruitvale Sanitary Dist. \(1910\) 158 Cal. 453, 457](#) [[111 P. 368](#)].) However, it is the State of California's policy to provide for the maximum feasible degree of local autonomy. (See Cal. Const., art. XI.) Thus, the Legislature has established a policy of providing, to the extent feasible, autonomy for local school districts. ([Ed. Code, § 14000](#); see [Butt v. State of California](#), *supra*, [4 Cal.4th at p. 681](#).) And for a variety of purposes, school districts have been held to be separate political entities rather than "the state." ([Butt v. State of California](#), *supra*, at p. [681](#).)

Any doubt with respect to the "local government" status of school districts under California Constitution, article XIII B is resolved by the article itself, which provides that, for its purposes, " 'Local government' means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State." ([Cal. Const., art. XIII B, § 8](#), subd. (d).) For purposes of [article XIII B](#), school districts are local government and not the state.

Since neither of the determinative factors in *Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d 830](#), is present here, that decision is not controlling. This, of course, does not resolve the question whether the ERAF legislation constitutes a reimbursable mandate; it merely means that *Lucia Mar Unified School Dist. v. Honig* does not provide the answer.

The answer, we conclude, is in the decision of *City of San Jose v. State of California*, *supra*, [45 Cal.App.4th 1802](#).

City of San Jose v. State of California involved a claim that legislation authorizing counties to charge cities and other local governments for the costs of booking arrestees into the county jail constituted a

reimbursable state mandate. The Court of Appeal rejected a contention that counties should be considered to be agents of the state and said: "Thus for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of 'local government'; both are considered local agencies or political subdivisions of the State. Nothing in [article XIII B](#) prohibits *280 the shifting of costs between local governmental entities." (*City of San Jose v. State of California*, *supra*, [45 Cal.App.4th at p. 1815.](#))

The ERAF legislation was, in part, an exercise of the Legislature's authority to apportion property tax revenues. (*San Miguel Consolidated Fire Protection Dist. v. Davis* (1994) [25 Cal.App.4th 134, 148-149](#) [[30 Cal.Rptr.2d 343](#)].) It was merely the most recent adjustment in the historical fluidity of the fiscal relationship between local governments and schools. (*County of Los Angeles v. Sasaki*, *supra*, [23 Cal.App.4th at p. 1457.](#)) [FN7]

FN7 The decisions in *San Miguel Consolidated Fire Protection Dist. v. Davis*, *supra*, [25 Cal.App.4th 134](#), and *County of Los Angeles v. Sasaki*, *supra*, [23 Cal.App.4th 1442](#), upheld the ERAF legislation against a variety of legal attacks. However, those decisions did not involve redevelopment agencies and tax increment financing peculiar to those agencies, and did not involve the question whether the ERAF legislation could constitute a reimbursable state mandate. Consequently, those decisions are not dispositive of issues presented here.

Pursuant to the decision in *City of San Jose v. State of California*, *supra*, [45 Cal.App.4th 1802](#), the shift of a portion of redevelopment agency funds to local schools did not create a reimbursable state mandate.

B. Applicability of [Article XIII B, Section 6](#) to Redevelopment Agencies

We find a second and alternative ground for concluding that the ERAF legislation did not impose a reimbursable state mandate on redevelopment agencies.

In *County of Fresno v. State of California* (1991) [53 Cal.3d 482](#) [[280 Cal.Rptr. 92, 808 P.2d 235](#)], the Supreme Court held that the subvention requirement

of [California Constitution, article XIII B, section 6](#) must be read in light of its textual and historical context and that, when so considered, subvention is required only when the costs in question can be recovered solely from tax revenues, i.e., "proceeds of taxes." ([53 Cal.3d at pp. 486-487](#); [Cal. Const., art. XIII B, § 8](#), subd. (c).) [FN8]

FN8 El Monte has asked us to take judicial notice of certain materials, including (1) the California ballot pamphlet for the November 6, 1979, Special Election, at which [article XIII B](#) was added to the Constitution, and (2) excerpts of the Journal of the Assembly for the 1975-1976 Regular Session, concerning statutory reimbursement provisions that preceded the addition of article XIII B to the Constitution. (Rev. & Tax. Code, former § § 2207, 2231.) These materials are submitted in support of El Monte's claim that reimbursement is required for any costs a local government incurs as the result of state action. In *County of Los Angeles v. State of California*, *supra*, [43 Cal.3d at pages 55](#) to 57, the Supreme Court considered the preexisting statutory scheme but nevertheless concluded that the constitutional subvention requirement is not implicated whenever any additional costs are imposed on a local government. In *County of Fresno v. State of California*, *supra*, [53 Cal.3d at pages 486 and 487](#), the Supreme Court held that the constitutional provision requires a subvention only when the costs imposed can be recovered solely through tax revenues. Under principles of stare decisis, we are bound by those authorities. (*Auto Equity Sales, Inc. v. Superior Court* (1962) [57 Cal.2d 450, 455](#) [[20 Cal.Rptr. 321, 369 P.2d 937](#)].) Thus, we deny the request for judicial notice.

In the ERAF legislation, however, the Legislature provided that a redevelopment agency's obligations for the local ERAF fund could be paid from *281 any legally available source, including the tax increment payable to the agency under [Health and Safety Code section 33670](#) and [article XVI, section 16](#) of California's Constitution. Pursuant to [Health and Safety Code section 33678](#), an agency's tax increment may not be deemed to be the proceeds of taxes within the meaning of article XIII B.

It follows that the ERAF legislation did not impose costs on redevelopment agencies that can be recovered solely from tax revenues within the meaning of California Constitution, article XIII B and thus, under the reasoning of *County of Fresno v. State of California*, *supra*, [53 Cal.3d at pages 486-487](#), the ERAF legislation did not impose a reimbursable state mandate.

Our conclusion is consistent with the holding in *Redevelopment Agency v. Commission on State Mandates*, *supra*, [55 Cal.App.4th 976](#). In that case, a redevelopment agency claimed the legislative requirement that a portion of its tax increment be placed into a low and moderate income housing fund constituted a reimbursable state mandate. The agency maintained that, although it was exempt from the appropriation limits of California Constitution, article XIII B, it nevertheless was entitled to claim reimbursement for state-mandated costs pursuant to that article. The Court of Appeal disagreed, concluding the same policies which support exempting tax increment financing from the appropriations limits of article XIII B also support denying reimbursement pursuant to [section 6](#) of that article. ([55 Cal.App.4th at p. 987.](#))

Under the narrow scope in which El Monte pursues this litigation, we find the reasoning of the decision in *Redevelopment Agency v. Commission on State Mandates*, *supra*, [55 Cal.App.4th at page 987](#), to be compelled by the Supreme Court's decision in *County of Fresno v. State of California*, *supra*, [53 Cal.3d at pages 486 through 487](#). El Monte does not challenge the validity of [Health and Safety Code section 33678](#), which precludes a redevelopment agency's tax increment from being considered to be the proceeds of taxes for purposes of California Constitution, article XIII B. Absent a successful challenge to that legislative determination, the decision in *County of Fresno v. State of California* forecloses a reimbursable mandate. In other words, a redevelopment agency cannot accept the benefits of [Health and Safety Code section 33678](#) while asserting an entitlement to reimbursement under [article XIII B, section 6](#).

C. Summary

For these two, alternative reasons, we agree with the Commission and the trial court that the ERAF legislation did not impose a reimbursable state mandate upon redevelopment agencies. [FN9]

FN9 Unlike these reasons, which are pure questions of law, the third basis relied upon by the Commission, i.e., that the ERAF legislation provided a means of recoupment, can involve certain factual considerations. (See *County of Fresno v. State of California*, *supra*, [53 Cal.3d at p. 487](#) [sufficiency of recoupment alternatives was at issue]; *Lucia Mar Unified School Dist. v. Honig*, *supra*, [44 Cal.3d at p. 837](#) [reasonableness of alternatives was at issue].) We need not, and do not, address the third ground relied upon by the Commission.

II. Procedural Issues

(5) El Monte argues the Commission's decision fails to meet the requirements of [Topanga Assn. for a Scenic Community v. County of Los Angeles \(1974\) 11 Cal.3d 506 \[113 Cal.Rptr. 836, 522 P.2d 12\]](#), which held that an adjudicative decision by an administrative agency must set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order. (*Id.* at p. 515.) However, as we have noted (see fn. 9, *ante*), the two bases for decision we have discussed present pure questions of law, to be resolved upon existing statutory, constitutional, and decisional authorities. The Commission's decision fully discussed the issues and its resolution of them, and was sufficient under the decision in *Topanga Assn. for a Scenic Community v. County of Los Angeles*.

El Monte complains the Commission failed to hear El Monte's claim within a reasonable time, as required by [Government Code section 17555](#) as it then read (Stats. 1984, ch. 1459, § 1, p. 5118), and California Code of Regulations, title 2, section 1187.1. El Monte also complains the Commission accepted position papers from the Department of Finance, over El Monte's objection that the papers were submitted late and were not properly served upon it. The Commission declined to strike the Department of Finance's submissions, reasoning that the submissions consisted of legal arguments rather than factual assertions; the Commission already was familiar with the legal arguments presented; and El Monte in fact obtained copies of the submissions and was able to respond.

We agree with the trial court that El Monte has failed to show cognizable prejudice with respect to these assertions. The issue presented is one of law *283 not fact. We cannot assume the Commission would have

reached an erroneous legal conclusion in the absence of the errors asserted by El Monte, and we cannot base a finding of prejudice upon the possibility the Commission would have reached an erroneous legal conclusion. To the contrary, we must affirm, regardless of procedural errors, if the decision was the legally correct resolution of the case. ([Cal. Const., art. VI, § 13](#); [Conservatorship of Fadley \(1984\) 159 Cal.App.3d 440, 442, 446-447 \[205 Cal.Rptr. 572\]](#); [Stafford v. People \(1956\) 144 Cal.App.2d 79, 81 \[300 P.2d 231.\]](#)) [FN10]

FN10 El Monte's claims of prejudice concern the burdens of bearing unreimbursed contributions to the county ERAF fund, and the difficulties in making financial projections and budget decisions prior to obtaining a decision on its claims. We recognize, as did the Commission, the frustration procedural delays may cause. However, since the Commission reached the legally correct decision, the asserted errors did not prejudice El Monte with respect to the only matter at issue here, the reimbursability of its ERAF contributions. In that sense, El Monte has failed to establish cognizable prejudice.

Disposition

The judgment is affirmed.

Davis, J., and Morrison, J., concurred.

A petition for a rehearing was denied August 23, 2000, and appellants' petition for review by the Supreme Court was denied November 1, 2000. Kennard, J., was of the opinion that the petition should be granted. *284

Cal.App.3.Dist.,2000.

CITY OF EL MONTE et al., Plaintiffs and Appellants, v. COMMISSION ON STATE MANDATES, Defendant and Respondent; DEPARTMENT OF FINANCE, Real Party in Interest and Respondent.

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COUNTY OF SONOMA, Plaintiff and Respondent,
v.

COMMISSION ON STATE MANDATES,
Defendant and Respondent; DEPARTMENT OF
FINANCE

et al., Real Parties in Interest and Appellants;
COUNTY OF AMADOR et al., Interveners and
Respondents.

No. A089524

Court of Appeal, First District, Division 1, California.

Nov. 21, 2000.

SUMMARY

The Legislature, in response to a budget crisis in 1992, reduced property taxes previously allocated to local governments and simultaneously placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts (Rev. & Tax. Code, former § 97.03, now [Rev. & Tax. Code, §§ 97.2 & 97.3](#); [Ed. Code, § 41204.5](#)). Sonoma County and 47 other counties filed a test claim with the Commission on State Mandates, pursuant to [Cal. Const., art. XIII B, § 6](#) (part of Prop. 4 pertaining to reimbursement of local governments for state-mandated new program or higher level of service), asserting that they had been subjected to a new program or an increased level of service for which subvention was required. The commission rejected the claim. Sonoma County challenged the commission's decision by filing a petition for a writ of administrative mandate and a complaint for declaratory relief, and the trial court found that the ERAF legislation created a new program or higher level of service that required reimbursement. (Superior Court of Sonoma County, No. SCV221243, Laurence K. Sawyer, Judge.)

The Court of Appeal reversed the trial court's judgment and remanded with instructions to enter a new judgment denying the writ petition. The court held that the ERAF legislation did not amount to the imposition of a state-mandated program or higher

level of service. The ERAF legislation did not result in increased actual expenditures, and [Cal. Const., art. XIII B, § 6](#), is expressly concerned with costs incurred by local government as a result of state-mandated programs. No duty of subvention is triggered where the local agency is not required to expend its tax proceeds. The court also held that Prop. 98 (amending [Cal. Const., art. XVI, § 8](#), to provide a minimum level of funding for schools), conferred no right of subvention on counties so as to require reimbursement under [Cal. Const., art. XIII B, § 6](#).

The court *1265 further held that the ERAF legislation did not violate home rule principles. (Opinion by Marchiano, J., with Strankman, P. J., and Swager, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 12--Fiscal Matters--Appropriations--Reimbursement of Local Government for State-mandated Program--Judicial Review of Statutes.

The determination whether statutes have established a mandate under [Cal. Const., art. XIII B, § 6](#), is a question of law. Also, where the facts underlying the case were undisputed, the appellate court reviews the issues as questions of law.

(2) Constitutional Law § 39--Distribution of Governmental Powers--Between Branches of Government--Legislative Power.

Unlike the federal Constitution, the California Constitution sets out limitations on the Legislature's power. The state Legislature has the entire lawmaking authority of the state. Furthermore, all intendments favor the exercise of the Legislature's plenary authority. Any doubts regarding the Legislature's power are resolved in favor of the exercise of that power. Limitations on that power are strictly construed and are not extended by implication.

(3) Legislature § 5--Powers--Taxation--Allocation of Local Property Tax Revenues.

The principle that the Legislature may exercise all powers not denied to it by the Constitution is of particular importance in the field of taxation, in which the Legislature is generally supreme. The provisions on taxation in the state Constitution are a limitation on the Legislature's power rather than a grant to it. The Legislature's authority to impose taxes and regulate the collection thereof exists unless it has been expressly eliminated by the Constitution. When considering the Legislature's considerable powers regarding budget and tax matters, the Legislature, not the court, decides where tax revenues will be allocated. Barring a statutory or constitutional violation, the court will not stop the Legislature if it transfers revenue from one place to another. Allocation of local property tax revenues is an appropriate exercise of the Legislature's authority regarding taxes. When acting to allocate taxes among various entities, the Legislature is *1266 acting within its particular sphere of power and discretion. Constitutional provisions will not be extended by implication to curtail the proper exercise of that power.

(4a, 4b, 4c) Schools § 12.5--School Districts--Funding--Reallocation of Property Taxes to Educational Revenue Augmentation Funds--State Mandates-- Reimbursement of Local Governments--New Programs and Higher Levels of Service.

After the Legislature reduced property taxes previously allocated to local governments and simultaneously placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts (Rev. & Tax. Code, former § 97.03, now [Rev. & Tax. Code, § § 97.2 & 97.3](#); [Ed. Code, § 41204.5](#)), counties were not entitled to reimbursement under [Cal. Const., art. XIII B, § 6](#) (part of Prop. 4 pertaining to reimbursement of local governments for state-mandated new program or higher level of service), since the ERAF legislation did not amount to the imposition of a state-mandated program or higher level of service. The ERAF legislation did not result in increased actual expenditures, and [Cal. Const., art. XIII B, § 6](#), is expressly concerned with costs incurred by local government as a result of state-mandated programs. No duty of subvention is triggered where the local agency is not required to expend its tax proceeds. Also, [Gov. Code, § § 17500-17630](#), were enacted by the Legislature to implement [Cal. Const., art. XIII B, § 6](#), and the obvious view of the Legislature, based on these enactments, is that reimbursement is intended to replace actual costs incurred. Moreover, [Cal. Const.,](#)

[art. XIII B, § 6](#), prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before their adoption, and school funding, at the time [Cal. Const., art. XIII B, § 6](#), became effective, was already a jointly funded partnership between the state and local governments. Such joint budget allocations are not subject to [Cal. Const., art. XIII B, § 6](#).

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(5) Constitutional Law § 13--Construction of Constitutions--Language of Enactment--Reimbursement of Local Governments.

Analysis of a reimbursement claim under [Cal. Const., art. XIII B, § 6](#) (reimbursement of local government for state-mandated new program or higher level of service), includes an assessment of the language of the constitutional provision, including the explicit requirements of *1267 costs of a new program or higher level of service as well as the purpose of the voters in seeking to prevent new, unfunded mandates in light of the spending limits of [article XIII B, Cal. Const., art. XIII B, § 6](#), does not provide subvention for every increased cost mandated by state law. In passing the initiative, the voters did not intend that all local costs resulting from compliance with state law would be reimbursable, but intended to prevent the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services the state believed should be extended to the public.

(6) Constitutional Law § 10--Construction of Constitutions--Legislature's Adoption of Particular Construction by Statute.

Where a constitutional provision may have different meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well nigh, if not completely, controlling.

(7) Schools § 12.5--School Districts--Funding--Reallocation of Property Taxes to Educational Revenue Augmentation Funds--State Mandates--Reimbursement of Local Governments--New Programs and Higher Levels of Service--Proposition 98.

After the Legislature reduced property taxes previously allocated to local governments and

simultaneously placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts (Rev. & Tax. Code, former § 97.03, now [Rev. & Tax. Code, §§ 97.2 & 97.3](#); [Ed. Code, § 41204.5](#)), Prop. 98 (amending [Cal. Const., art. XVI, § 8](#), to provide a minimum level of funding for schools), conferred no right of subvention on counties so as to require reimbursement under [Cal. Const., art. XIII B, § 6](#). Prop. 98 does not appropriate funds or result in a mandated county program or higher level of service that the counties had not previously supported through property tax allocations. The power to appropriate funds was left in the hands of the Legislature. Prop. 98 merely provides the formulas for determining the minimum to be appropriated every budget year. The state's obligation is to ensure specific amounts of moneys are applied by the state for education. Budgetary decisions that allocate funds to various state agencies or political subdivisions cannot be placed in the category of mandates that require subvention. Such decisions, of necessity, impact different agencies of the state or political subdivisions, with some getting more funds as others get less. Local *1268 governments do not have claims to specified portions of the budget in each budget year, and absent some entitlement to the claimed revenues, the counties could not prevail in their action for reimbursement.

(8) Schools § 12--School Districts--Funding--School Funds--Reallocation of Property Taxes to Educational Revenue Augmentation Funds--Home Rule.

The Legislature's reduction of property taxes previously allocated to local governments, and the simultaneous placement of an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts (Rev. & Tax. Code, former § 97.03, now [Rev. & Tax. Code, §§ 97.2 & 97.3](#); [Ed. Code, § 41204.5](#)), did not violate home rule principles. The home rule principle refers to a local government's power to control and finance its own local affairs. Neither the record in the present case, nor the ERAF legislation, suggested that the Legislature had infringed upon the counties' discretionary affairs so as to interfere with the rights of local residents to home rule. Home rule could not be used as a bar to budget allocation decisions.

COUNSEL

Bill Lockyer, Attorney General, Manuel M. Medeiros, Assistant Attorney General, Andrea Lynn Hoch, Kenneth R. Williams and Daniel G. Stone, Deputy Attorneys General, for Real Parties in Interests and Appellants.

Olson, Hagel, Leidigh, Waters & Fishburn, N. Eugene Hill, Deborah B. Caplan and Lance H. Olson for Commission on State Mandates as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Steven M. Woodside, County Counsel, Kathleen A. Larocque and Sally B. McGough, Deputy County Counsel, for Plaintiff and Respondent and for Interveners and Respondents.

Trevor A. Grimm, Jonathan M. Coupal and Timothy A. Bittle for Howard Jarvis Taxpayers Association as Amicus Curiae on behalf of Plaintiff and Respondent.

McMurchie, Weill, Lenahan, Lee & Slater, David W. McMurchie and Vicki E. Hartigan for California Special Districts Association, California Association of Recreation and Park Districts, California Association of Public Cemeteries and Mosquito and Vector Control Association of California as Amici Curiae on behalf of Plaintiff and Respondent. *1269

No appearance for Defendant and Respondent.

Burke, Williams & Sorensen and Leland C. Dolley for 95 California Cities as Amici Curiae.

MARCHIANO, J.

In response to a budget crisis in 1992, the Legislature reduced the share of property taxes previously allocated to local governments and simultaneously placed an equal amount of property tax revenues into Educational Revenue Augmentation Funds (ERAF's) for distribution to school districts. [FN1] The County of Sonoma (the County) then sought reimbursement pursuant to [article XIII B, section 6](#) of the California Constitution (section 6), contending that the ERAF legislation amounted to the imposition of a state mandated program or higher level of service. [FN2] The Commission on State Mandates (Commission) determined that section 6 does not apply to this reallocation of tax revenues. The superior court disagreed and issued a writ of mandate ordering the Commission to conduct further proceedings to determine the amount of reimbursement due to the County. The issue raised by

this appeal is whether enactment of the ERAF legislation resulted in costs to the County for a state mandated new program or higher level of service, thereby requiring reimbursement pursuant to section 6.

FN1 The challenged legislation added [Revenue and Taxation Code section 97.03](#) (as enacted by Stats. 1992, ch. 699, § 12, p. 3093 and ch. 700, § 4, p. 3120, now [Rev. & Tax. Code, § § 97.2](#) and [97.3](#), see *id.*, § [97.2](#), subd. (f)) and [Education Code section 41204.5](#) (ERAF expenditures deemed to have been in effect in 1986-1987 fiscal year for purposes of the calculation of the percentage of General Fund revenues appropriated toward minimum educational funding that year).

FN2 Section 6 provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

We conclude that the state is not obligated to reimburse local governments for this change in the allocation of property tax revenues. The reallocation of revenue resulting from the challenged legislation does not result in reimbursable "costs" within the meaning of section 6. Furthermore, shifting the percentage of responsibility for a program that was jointly funded by state and local governments at the time section 6 became effective is not the *1270 imposition of a "new program or higher level of service." (*Ibid.*) We reverse the trial court's judgment.

Background

The challenged legislation added [section 97.03 to the Revenue and Taxation Code](#). The legislation reduced the amount of property tax revenue to be allocated to local government pursuant to a specified formula and allocated an equal amount of revenue to the ERAF for distribution to county school districts. [FN3] ([Rev. & Tax. Code, § 97.2.](#)) At the same time, the Legislature enacted Senate Bill No. 766 (1991-1992 Reg. Sess.), which added [section 41204.5 to the Education Code](#). The new Education Code provision had the effect of decreasing the amount of the state's contribution to the constitutionally mandated minimum funding level for education in the amount of the allocation to the county ERAF's. [FN4]

FN3 Former Revenue and Taxation Code section 97.03, enacted in 1992, is now located in [Revenue and Taxation Code sections 97.2](#) and [97.3](#). (Stats. 1992, ch. 699, § 12, p. 3093; Stats. 1992, ch. 700, § 4, p. 3120; see Historical and Statutory Notes, 59 West's Ann. Rev. & Tax. Code (1998 ed.) foll. former § § 97.01 to 97.05, p. 174.) [Revenue and Taxation Code section 97.2](#) provides: "Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992-93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997-98 and 1998-99 fiscal years pursuant to subdivision (e), as follows: [¶] (a)(1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by 0.953649: [list of dollar amounts for the 58 California counties] [¶] ... [¶] (d)(1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community

college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991-92 fiscal year."

FN4 Education Code former section 41204.5 stated that: "for the 1992-1993 fiscal year and each fiscal year thereafter, the percentage of 'General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-1987,' for purposes of paragraph (1) of subdivision (b) of [Section 8 of article XVI of the California Constitution](#), shall be deemed to be the percentage of General Fund revenues that would have been appropriated for those entities if the [1992 amendments to the Revenue and Taxation Code] ... had been operative for the 1986-87 fiscal year."

Our resolution of the issues presented by this appeal is aided by a review of the changes in the state's role in school finance, including the *Serrano* cases, Proposition 13, and the post-Proposition 13 legislative scramble to replace property tax revenues in the state budgetary scheme. Understanding *1271 which entity had the responsibility for funding education on July 1, 1980, when section 6 became effective is necessary for an analysis of the issues raised in this case. The legislative action in 1992 did not spring up full-grown like Venus from the sea, but rather grew out of decades of developments in school funding and tax restrictions. Placing the issue in the proper historical context makes it clear that school finance has always been a partnership involving state and local financing buffeted at times by the external forces of initiatives, variable economic conditions in California, and court decisions interpreting constitutional provisions.

After reviewing the litigation, legislation, initiative measures, and specific events leading to this appeal, we proceed to an analysis of the purpose and requirements of subvention for state-mandated programs and conclude that neither a cost nor a new program has been created by the ERAF legislation. We begin with a historical review of the fluid nature of school funding in California.

The 1960's: State and Local Roles in School Funding

In the late 1960's, California public schools derived over 90 percent of their financial support from local taxes on real property, supplemented by the State School Fund. [FN5] ([Serrano v. Priest \(1971\) 5 Cal.3d 584, 591 & fn. 2 \[96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187\]](#) (*Serrano I.*)) The Legislature authorized local governments to levy taxes on real property to meet the needs of the district's schools. Most of the balance of a school district's revenue came from the state. (*Id.* at p. 592.) Specifically, in this pre- *Serrano I* and pre-Proposition 13 period, 55.7 percent of school revenues came from local property taxes and 35.5 percent from state aid. [FN6] ([Serrano I, supra, at p. 591, fn. 2.](#)) During this time the Legislature determined the manner of school financing shared by local government. *1272

FN5 "The Constitution of 1849 directed the Legislature to 'provide for a system of common schools, by which a school shall be kept up and supported in each district' ([Cal. Const. of 1849, art. IX, § 3.](#)) That constitutional command, with the additional proviso that the school maintained by each district be 'free,' has persisted to the present day. ([Cal. Const., art. IX, § 5.](#)) [¶] In furtherance of the State system of free public education, the Constitution also ... establishes a State School Fund" ([Butt v. State of California \(1992\) 4 Cal.4th 668, 680 \[15 Cal.Rptr.2d 480, 842 P.2d 1240\].](#)) [Article XVI, section 8 of the California Constitution](#) provides for the State School Fund as follows: "From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education." ([Cal. Const., art. XVI, § 8, subd. \(a.\)](#))

FN6 State aid was in two forms: basic aid, consisting of a flat dollar amount per pupil; and equalization aid, which was distributed in inverse proportion to the wealth of the district. ([Serrano v. Priest \(1976\) 18 Cal.3d 728, 739 \[135 Cal.Rptr. 345, 557 P.2d 929\]](#) (*Serrano II.*))

1971-1976: The Serrano Litigation

The disparity created by reliance on the value of a district's real estate was challenged in 1971 on constitutional grounds in *Serrano I*. The court determined that the system of school financing impermissibly discriminated based on the wealth of the district. (*Serrano I*, *supra*, [5 Cal.3d at pp. 598, 614-615.](#)) The result was that the quality of a child's education was irretrievably tied to the wealth of the residents of the district. (*Id.* at pp. 599-601.) The *Serrano I* court remanded the case for a trial on the merits. (*Id.* at p. 619.)

During the trial of the remanded *Serrano I* case, the Legislature passed new legislation that increased the amount of state aid to schools, limited expenditures and tied the limitations to inflation adjustments so that districts with higher local revenues received smaller upward adjustments. (*Serrano II*, *supra*, [18 Cal.3d at pp. 736-737, 742-743.](#)) At this juncture in school funding, financial responsibility was still primarily with local government, with the state supplying aid in an attempt to remedy the deficiencies identified by the Supreme Court. The Legislature continued to determine the manner of school financing.

In *Serrano II*, the court again determined that the state's school finance structure violated the California Constitution despite the legislative attempts to remedy the perceived discrimination. (*Serrano II*, *supra*, [18 Cal.3d at p. 768.](#)) The court found that the system impermissibly "renders the educational opportunity available to the students of this state a function of the taxable wealth [per pupil] of the districts in which they live" (*Id.* at p. 769.)

After *Serrano II*, the Legislature passed Assembly Bill No. 65 (1977-1978 Reg. Sess.) to increase the ability of poorer districts to raise funds by providing state assistance if actual revenues fell below a scheduled amount. In addition, specified "squeeze" formulas served to decrease the inflation adjustment for wealthier districts and to transfer revenues from high to low wealth districts. (Stats. 1977, ch. 894, § 16.5, p. 2681; Comment, *Inequalities in California's Public School System: The Undermining of Serrano v. Priest and the Need for a Minimum Standards System of Education* (1999) 32 Loyola L.A. L.Rev. 583, 599.) It has been said that the Legislature's attempt to respond to the *Serrano* decisions resulted in "a true 'power equalizing' system whereby local property tax revenue was to be redistributed from

tax-rich to tax-poor districts." (Comment, *Educational Financing Mandates in California: Reallocating the Cost of Educating Immigrants Between State and Local Governmental Entities* (1994) [35 Santa Clara L.Rev. 367, 392.](#)) School finance remained, however, a jointly funded system. *1273

1978: Proposition 13 and the Legislative Response

Before Assembly Bill No. 65 could take effect, the voters passed Proposition 13 in 1978, which fundamentally restricted the ability of local governments to raise funds to finance schools through local property tax revenues. Proposition 13 involved several elements, including limitations on the tax rate on real property and on increases in the assessed value of real property. The measure also limited any future changes in state taxes to those passed by two-thirds of the Legislature, and future changes in local tax increases to those imposed by a two-thirds vote of the electors. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) [22 Cal.3d 208, 220](#) [[149 Cal.Rptr. 239, 583 P.2d 1281](#)] (*Amador Valley*)).

The consequences of Proposition 13 were perceived as catastrophic. "Although California is renowned for its earthquakes, no tremor of high Richter-scale proportion has shaken it quite like the enactment of Proposition 13. Every local entity in the state feared potential economic collapse in the aftershock of that momentous decision by the people." (*Jarvis v. Cory* (1980) [28 Cal.3d 562, 573](#) [[170 Cal.Rptr. 11, 620 P.2d 598](#)] (*Jarvis*)). Despite the dire predictions, Proposition 13 was upheld as a valid constitutional amendment in *Amador Valley*, *supra*, [22 Cal.3d 208](#).

"Because the state had accrued a sizeable surplus of funds, it was immediately called upon to help maintain local governments through the initial period of drastic revenue loss." (*Jarvis*, *supra*, [28 Cal.3d at p. 573.](#)) Proposition 13 provided that property taxes, at the reduced amount, were to be "collected by the counties and apportioned according to law to the districts within the counties." ([Cal. Const., art. XIII A, § 1](#), subd. (a).) As noted by the Legislative Analyst's comment in the California voters pamphlet, there was no state law at the time that provided for the distribution of these revenues. (Ballot Pamp., Primary Elec. (June 6, 1978) pp. 56-57.) The Legislature acted quickly to fill this void.

The Legislature enacted Senate Bill No. 154 (1977-

1978 Reg. Sess.), an emergency "bailout" bill, effective for the 1978-1979 fiscal year, providing that the state would distribute the reduced pool of property tax revenues. (Stats. 1978, ch. 332, § 36, p. 706; *Jarvis, supra*, [28 Cal.3d at p. 574.](#)) The state also provided block grants and relieved counties of the costs of various health and welfare programs. Additional state aid was allocated to the public schools on a sliding scale, to attempt to guarantee to each school district 85 percent (for higher revenue districts) to 91 percent (for lower revenue districts) of the revenue it would have been allocated if Assembly Bill No. *1274 65 had been implemented. (*Arvin Union School Dist. v. Ross* (1985) 176 Cal.App.3d 189, 196 [221 Cal.Rptr. 720]. *Senate Bill No. 154* was a temporary one-year measure that increased state aid to schools, but did not place full financial responsibility on the state.

1979-1980: The Assembly Bill No. 8 Shift of Funds to Local Governments

The most important legislation, for purposes of this appeal, is Assembly Bill No. 8 (1979-1980 Reg. Sess.), the long-term attempt to address the post-Proposition 13 financial problems of schools and other local entities. (Stats. 1979, ch. 282, p. 959.) The initial provisions of Assembly Bill No. 8 took effect in the 1979-1980 fiscal year. The long-range financing provisions of Assembly Bill No. 8 did not become effective until the 1980-1981 year.

It is undisputed and a part of the administrative record in this case, that in 1979, the Legislature reduced the share of local property tax revenues allocated to schools from approximately 53 percent to approximately 35 percent and made up the difference with state funds. The property tax revenue allocated to counties was increased from approximately 30 percent to approximately 32 percent, the allocation to cities was increased from approximately 10 to approximately 15 percent and the allocation to special districts was increased from approximately 7 to approximately 18 percent. (See also Legis. Analyst, analysis of Assem. Bill No. 8 (1979-1980 Reg. Sess.) as amended June 21, 1979.)

Each school district received a share of the reduced pool of property taxes in the county in proportion to the share received in the 1978-1979 school year. Additional aid from state funds was supplied to replace the reduction in property taxes. (Assem. Conf. Com. on Long-term Local Gov. & School Financing, Rep. on Assem. Bill No. 8 (1979-1980

Reg. Sess.) as amended July 19, 1979, p. 8.) Although in the aftermath of Proposition 13, the state's percentage of support for schools increased from the pre-*Serrano* days, joint state and local funding responsibility for school districts existed when section 6 became effective on July 1, 1980. ([Cal. Const., art. XIII B, § 10.](#))

The 1992 Reallocation to ERAF's

School funding practices remained relatively stable until enactment of the 1992-1993 legislation that forms the basis for the claim of subvention in this case. "The State of California faced an unprecedented budgetary crisis at the outset of fiscal year 1991-1992, with expenditures projected to exceed revenues by more than \$14 billion." (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 163 [6 Cal.Rptr.2d 714].) *1275 In 1992, the Legislature enacted the bill that was subsequently codified as [Revenue and Taxation Code section 97.2](#). That statute reduced the post-Proposition 13 allocation of property taxes to local governments and allocated amounts equal to those reductions to county ERAF's for distribution to the county schools. (Stats. 1992, ch. 699, § 12, p. 3093; Stats. 1992, ch. 700, § 4, p. 3120 [Sen. Bill No. 844 (1991-1992 Reg. Sess.) rewriting the provisions of the prior bill]; see Historical and Statutory Notes, 59 West's Ann. Rev. & Tax. Code (1998 ed.) foll. former § § 97.01 to 97.05, p. 174.)

By 1993, the recessionary economy and the growing revenue requirements of schools jeopardized the state's ability to finance even essential state functions. Given the bleak economic circumstances, the Governor determined that education, along with public safety, had to receive priority over state funding of other local services. The result was that the 1993-1994 budget again reduced the amount of the post-Proposition 13 bailout to local government and reallocated local property tax revenues to ERAF's. [FN7] (Governor's Budget Summary, 1993-1994, pp. 44, 92-93.)

FN7 The use of revenue allocation funds as revenue spreading mechanisms is not confined to the ERAF's at issue in this case. In the wake of Proposition 13, the Legislature created other special allocation funds, for example, the Special District Augmentation Fund to share funds among special districts within counties. ([American](#)

River Fire Protection Dist. v. Board of Supervisors (1989) 211 Cal.App.3d 1076 [259 Cal.Rptr. 858]; see also Gov. Code, § § 30054, 30055 [Public Safety Augmentation Fund].)

The ERAF reallocation design can be summarized as requiring reduction of property tax revenues previously allocated to counties by use of a specified formula, deposit of the reduced amounts into ERAF's, and distribution of the ERAF funds to schools. Another portion of the same legislation deemed the ERAF revenues to be part of the state General Fund revenues for purposes of calculating the minimum educational funding guarantee under Proposition 98. [FN8] The overall result of these statutes is that the tax revenues of the counties are decreased, school revenues remain the same, and the minimum school funding guarantee of Proposition 98 is satisfied in part by the ERAF funds. This legislative adroitness fulfilled the funding of Proposition 98 by reallocating available finite funds from one local governmental *1276 entity to another. (Legis. Analyst, Rep. to Joint Legis. Budget Com., analysis of 1993-1994 Budget Bill, p. 90.) [FN9]

FN8 As explained by the Legislative Analyst, California Constitution, article XVI, section 8, approved by the voters in 1988 as Proposition 98, "[e]stablishes a minimum level of funding for public schools and community colleges. [¶] [and] [r]equires the state to spend any excess revenues, up to a specified maximum, for public schools and community colleges." (Ballot Pamp., Gen. Elec. (Nov. 8, 1988) p. 78.) The minimum level is established by use of one of three formulas, the first of which references the percentage of General Fund revenues appropriated to schools in fiscal year 1986-1987.

FN9 As stated in the Governor's Budget Summary for 1993-1994, the state's response to Proposition 13 had included state assumption of approximately \$1.3 billion of the county health and welfare expenses and a shift of approximately \$800 million of local property tax revenue from school funding to cities, counties, and special districts. Allocations to schools were

decreased, and the state assumed a larger proportion of responsibility for funding schools. Prior to Proposition 13, 53 percent of local property taxes went to schools. In 1991-1992, only 35 percent went to the schools. (Governor's Budget Summary, 1993-1994, p. 43.)

Concurrently with the ERAF legislation, and thereafter, the state cushioned the loss of revenue to local governments through a variety of mitigation measures, including an additional sales tax, that was established in the Constitution by the voters in 1993, trial court funding reform, supplemental funding for special police protection districts, grants of authority to counties to reduce general assistance levels, loans for property tax administration and a one-time mitigation of \$292 million. The effects of the ERAF legislation and the state's efforts to offset those effects continue to the present time. (Governor's Budget Summary, 1999-2000, pp. 41-43; Legis. Analyst, Rep. to Joint Legis. Budget Com., The 1999-00 Budget: Perspectives and Issues, pp. 154-157.)

The ERAF legislation has been challenged and upheld. In *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442 [29 Cal.Rptr.2d 1031] (*Sasaki*) and *San Miguel Consolidated Fire Protection Dist. v. Davis* (1994) 25 Cal.App.4th 134 [30 Cal.Rptr.2d 343] (*San Miguel*), the courts upheld the legislation against constitutional challenges. The petitioner in *San Miguel* also argued that it was entitled to offset reimbursement owed by the state against any shifting of property tax revenues. (*San Miguel, supra*, 25 Cal.App.4th at pp. 142-143.) The court rejected the claim of offset as premature, noting that claims for payment had been submitted to the state but had not yet been adjudicated. (*Id.* at pp. 155-156.)

This case now raises the issue foreshadowed in *San Miguel*. [FN10] The counties here argue that the challenged reallocation of property tax revenues is a state-mandated cost of a new program, entitling the affected local governments to reimbursement. (Gov. Code, § 17500 et seq.; § 6.) *1277

FN10 After briefing was complete in this case, but prior to oral argument, the Third District issued its opinion in *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266 [99 Cal.Rptr.2d

[3331](#) (*City of El Monte*), in which a redevelopment agency sought reimbursement for a statute that required the agency to make payments to an ERAF. The court denied reimbursement, for the dual reasons that the agency was not required to expend tax revenues and the court's view that the transfer of costs was from one local entity to another, not from the state to local government.

Background of This Appeal - The Test Claim

After the adverse decisions for the county and special district in *Sasaki, supra*, [23 Cal.App.4th 1442](#), and *San Miguel, supra*, [25 Cal.App.4th 134](#), the County and 47 other counties (collectively, the Counties) filed a test claim with the Commission, pursuant to the provisions of section 6 and the implementing legislation of [Government Code section 17500](#) et seq. [FN11] The County claimed that it had been subjected to a new program or an increased level of service for which subvention was required. The "new" program or service was identified as the state's shift of local property tax revenues to ERAF's and the contemporaneous reduction in the amount the state contributed to meet the Proposition 98 minimum funding goal for schools. [FN12] The County argued that these two actions combined to force local government to bear the financial burden of Proposition 98 funding that had formerly been financed solely by the state.

FN11 [Government Code section 17521](#) defines a test claim as: "the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state."

FN12 The challenged statutes were listed as [Revenue and Taxation Code sections 95](#) et seq., [95.1](#) et seq., [97.01](#) et seq., [97.03](#), [97.035](#), [97.038](#) and [Education Code section 41204.5](#).

On November 30, 1998, following public hearings on the test claim, the Commission issued its decision rejecting the claim. The Commission based its denial of the test claim on its conclusion that although the

test claim legislation reduced county revenues, it did not impose a spending program.

The Action in the Superior Court

On March 17, 1999, the County challenged the Commission's decision by filing both a petition for writ of administrative mandate pursuant to [Code of Civil Procedure section 1094.5](#) and a complaint for declaratory relief in the superior court.

The petition alleged that the ERAF legislation imposed a new program or higher level of service and required reimbursement of nearly \$5 billion to local governments for the 1996-1997 and 1997-1998 fiscal years. The second cause of action for declaratory relief alleged the same facts, but added that by the Legislature's actions in shifting the allocation of funds to the ERAF's and deeming the shift to have occurred in 1986-1987 for purposes of paragraph (b)(1) of Proposition 98, the state reduced the percentage of state funds allocated to education from 40 percent to 34 percent. The second cause of action requested a declaration that the state may not exercise its power to allocate property taxes without reimbursing local *1278 governments, that the California Constitution requires reimbursement whenever the state shifts property tax revenues from one local entity to another for state purposes, that funding education is a state obligation, and that the state cannot increase the percentage of public school funding derived from property tax revenue without reimbursing local governments in an equal amount. In May of 1999, the court allowed an additional 53 counties to intervene in the action.

On October 21, 1999, the court granted a motion to dismiss the second cause of action, finding that the request for declaratory relief addressed issues that were neither definite nor concrete in the factual context of the case, which involved the Commission's rejection of the test claim. On the same date, after reviewing the administrative record, the briefs of the parties, and hearing argument, the court filed its statement of decision finding that the ERAF legislation: "created a new program or higher level of service which requires reimbursement under [Article XIII B, section 6 of the California Constitution](#) since the shift of local property taxes compels the counties to accept financial responsibility in whole or in part for a program which was required to be funded by the State by the enactment of Proposition 98." The requested writ of mandate issued on November 18, 1999. The State of California, California Department

of Finance, and the Director of the Department of Finance appealed from the judgment directing issuance of the writ. [FN13]

FN13 We granted leave for the following organizations to file briefs as amici curiae: the Commission on State Mandates, in support of appellant, and 95 California cities, the Howard Jarvis Taxpayers Association, the California Special Districts Association, California Association of Recreation and Park Districts, California Association of Public Cemeteries, and the Mosquito and Vector Control Association of California, in support of respondent.

Based on our review of the relevant historical events, focusing on the language of [section 6](#) and the challenged legislation, we determine that the trial court improperly looked to the use made of the reallocated revenues instead of whether the legislation mandates costs due to a new program or higher level of service for a program previously funded entirely by the state as required by the Constitution, interpretive case law, and implementing statutes.

Discussion

Decisions of the Commission are reviewed by petition in the superior court pursuant to [Code of Civil Procedure section 1094.5](#), "on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim *1279 and may direct the commission on what basis the claim is to receive a rehearing." ([Gov. Code, § 17559](#), subd. (b).) (1) Although the statute references a substantial evidence standard of review, "[t]he determination whether the statutes here at issue established a mandate under [section 6](#) is a question of law." ([County of San Diego v. State of California \(1997\) 15 Cal.4th 68, 109 \[61 Cal.Rptr.2d 134, 931 P.2d 312\]](#) ([County of San Diego](#))). The facts underlying this case were undisputed, thus we review the issues as questions of law.

Limited Scope of Issues Addressed in This Appeal

It is important at the outset of this discussion to clarify the scope of the issues raised by this appeal and identify issues that are not properly before us on

an appeal from a subvention decision. As our Supreme Court cautioned a decade ago, in evaluating a claim for subvention, we cannot become entangled in consideration of where the benefit of questioned state action falls. In [City of Sacramento v. State of California \(1990\) 50 Cal.3d 51 \[266 Cal.Rptr. 139, 785 P.2d 522\]](#) ([City of Sacramento](#)), the court cautioned that subvention does not depend on "whether the 'benefit' of a state-imposed local requirement falls principally at the state or local level. Attempts to apply such a 'benefit' test to the myriad of individual cases could easily produce debates bordering on the metaphysical. Nothing in the language or history of [article XIII B](#), or prior subvention statutes, suggests an intent to force such debates upon the Legislature each time it considers legislation affecting local governments." (*Id.* at p. 70, fn. 14.)

In addition, this appeal does not encompass an attack on the constitutionality, wisdom, or propriety of the state's budget process that resulted in the ERAF legislation. The original complaint in the superior court contained a second cause of action for declaratory relief requesting a wide-ranging declaration that, among other things, funding education is a state obligation, the state may not exercise its power to allocate tax revenues in a manner that interferes with home rule powers, [section 6](#) established the state's obligation to fund education solely from the General Fund, and Assembly Bill No. 8 froze the amount of property taxes that may be allocated to schools. However, that cause of action was dismissed by the trial court, and no appeal or cross-appeal was filed regarding that claim. Issues raised by the second cause of action are not properly before us in this appeal by the state. [FN14]

FN14 All constitutional issues preserved by language in the prayer accompanying the first cause of action are discussed.

Finally, we note that the court in [Sasaki, supra, 23 Cal.App.4th 1442](#), held that the county plaintiffs in that case lacked standing to challenge the *1280 constitutionality of [Education Code section 41204.5](#). That court reasoned that the matter of how the state treats revenues it allocates to educational entities may concern the educational entities, but no theory would entitle a county to a writ of mandate negating that code section. ([Sasaki, supra, 23 Cal.App.4th at p. 1449](#).) In [San Miguel, supra, 25 Cal.App.4th 134](#), the

court acknowledged a question as to whether special districts could challenge the constitutionality of the ERAF legislation, but indicated that individual taxpayer plaintiffs in that case had standing. (*Id.* at pp. 143-145.) The only plaintiffs in this action are counties. Thus, the only issues properly before us are those bearing on the question of whether the decision to reallocate a portion of property tax revenues in the challenged years results in a state mandated cost for a new program or higher level of service such that subvention is required. We have no wish to become enmeshed in the metaphysical debates that the court warned against in *City of Sacramento*. (*City of Sacramento, supra*, [50 Cal.3d at p. 70.](#)) This case does not involve whether it was legally prudent to rob Peter to pay Paul. [FN15] Consequently, we decline to expand our consideration to issues of the identity of the beneficiary of the allocation or the constitutionality of legislation relating to school entities. We confine our discussion to the question of subvention.

FN15 Difficult fiscal decisions have always occupied government policy makers. In 1560, after the Abbey Church of St. Peter, Westminster joined the London Diocese, many of its assets were appropriated to repair St. Paul's Cathedral. An ecclesiastical commentator, complaining about the funding decision, declared that it was not desirable to rob St. Peter's altar in order to build one to St. Paul, soon popularized as robbing Peter to pay Paul. (Brewer, *Dict. of Phrase and Fable* (1898) <<http://www.bartleby.com/81/14383.html>> [as of Nov. 9, 2000].)

Rules of Constitutional Construction

(2) Unlike the federal Constitution, our state Constitution sets out limitations on the power of the Legislature. (*California Teachers Assn. v. Hayes* (1992) [5 Cal.App.4th 1513, 1531](#) [[7 Cal.Rptr.2d 699](#)] (*Hayes*)). The state Legislature has the "entire lawmaking authority of the state" (*Ibid.*) Furthermore, "all intendments favor the exercise of the Legislature's plenary authority" (*Id.* at p. 1532.) Any doubts regarding the Legislature's power are resolved in favor of the exercise of that power. Limitations on that power are strictly construed and are not extended by implication.

(3) The principle that the Legislature may exercise all powers not denied to it by the Constitution "is of particular importance in the field of taxation, in which the Legislature is generally supreme...." "[t]he provisions on taxation in the state Constitution are a limitation on the power of the Legislature rather than a grant to it. [Citations.] Its power in the field of *1281 taxation is limited only by constitutional restrictions." [Citation.] In other words, the Legislature's authority to impose taxes and regulate the collection thereof exists unless it has been expressly eliminated by the Constitution. [Citations.]" (*Sasaki, supra*, [23 Cal.App.4th at pp. 1453- 1454](#), citing *Armstrong v. County of San Mateo* (1983) [146 Cal.App.3d 597, 624](#) [[194 Cal.Rptr. 294](#)].)

When considering the Legislature's considerable powers regarding budget and tax matters, "the Legislature, not this court, decides which of the innumerable public mouths tax revenues will feed. Barring a statutory or constitutional violation, it is not for this court to stop the Legislature if it transfers revenue from Peter to compensate Paul" (*Arcadia Redevelopment Agency v. Ikemoto* (1993) [16 Cal.App.4th 444, 453](#) [[20 Cal.Rptr.2d 112](#)] (*Arcadia*)). "Under these principles, there is no basis for applying [section 6](#) as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities." (*City of San Jose v. State of California* (1996) [45 Cal.App.4th 1802, 1817](#) [[53 Cal.Rptr.2d 521](#)] (*City of San Jose*)).

Allocation of local property tax revenues is an appropriate exercise of the Legislature's authority regarding taxes. In *Amador Valley, supra*, [22 Cal.3d 208](#), the court upheld Proposition 13 and the vesting in the Legislature of the general power to allocate revenues from local property taxes. ([22 Cal.3d at pp. 225-226.](#)) The court noted that the Legislature was not thereby empowered to reward or punish local agencies and thereby undermine local power to address regional issues by withholding funds. The court explained that Proposition 13 did not empower the state to "direct or control local budgetary decisions or program or service priorities ..." or otherwise interfere with local decisionmaking. ([22 Cal.3d at p. 226.](#)) However, the *Amador Valley* court specifically stated that legislation that merely allocates funds on a pro rata basis, without imposing conditions on the local entity's use of the funds is a valid exercise of the state's authority under Proposition 13. ([22 Cal.3d at p. 227.](#))

Courts have upheld the Legislature's specific power

to reduce a county's allocated share of property taxes. In *Sasaki*, the court reviewed the same legislation that is the basis of the claim for subvention in this appeal. The court traced the history of education funding from *Serrano* through the post- Proposition 13 legislation, noting that the Legislature's bailout of counties and distribution of the remaining tax revenues was upheld in *Amador Valley*. (*Sasaki, supra*, [23 Cal.App.4th at pp. 1450-1452.](#)) The *Sasaki* court recognized that in the wake of Proposition 13, the state assumed a larger *1282 share of the funding of schools, but found no intent to prevent the state from altering the proportionate shares of revenue to address future changed conditions. (*Sasaki, supra*, [23 Cal.App.4th at p. 1456.](#)) The fact that the state shifted revenue away from the schools and towards local government after Proposition 13 did not restrict the state's power to change the allocation again, "in the context of comprehensive legislative planning for the funding of both entities from a variety of sources, including property tax revenue." (*Sasaki, supra*, [23 Cal.App.4th at p. 1457.](#))

When acting to allocate taxes among various entities, the Legislature is acting within its particular sphere of power and discretion. Constitutional provisions will not be extended by implication to curtail the proper exercise of that power. Keeping these principles in mind, we turn to an analysis of the requirements of [section 6](#) to determine whether the challenged allocation of property tax revenues necessitates subvention to the Counties.

[Section 6](#) Subvention Is Intended for Increases in Actual Costs

(4a) In the November 1979 election, the voters passed Proposition 4, which included [section 6](#), and was intended as a complementary measure to Proposition 13. Designated "the Spirit of 13," the initiative provided for a constitutional limitation on government spending. (Ballot Pamp., Special Statewide Elec. (Nov. 6, 1979) p. 18.) As incorporated in California Constitution, article XIII B, Proposition 4 was intended to "require state and local governments to limit their budgets" (Ballot Pamp., Special Statewide Elec., *supra*, p. 18; *County of San Diego, supra*, [15 Cal.4th at p. 81.](#)) In addition, voters were told that [section 6](#) of Proposition 4 was intended to prevent state government attempts "to force programs on local governments without the state paying for them." (Ballot Pamp., Special Statewide Elec., *supra*, p. 18.)

[Section 6](#) provides: "Whenever the Legislature ... 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 program or increased level of service" [FN16] As noted in [Lucia Mar Unified School Dist. v. Honig \(1988\) 44 Cal.3d 830 \[244 Cal.Rptr. 677, 750 P.2d 318\]](#) (*Lucia Mar*), the principle of reimbursement was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources." (*Id.* at p. 836, fn. 6.) *1283

FN16 Proposition 4 excepted mandates enacted prior to January 1, 1975, from the subvention provision. ([Cal. Const., art. XIII B, § 6](#), subd. (c).)

(5) Analysis of a [section 6](#) reimbursement claim includes an assessment of the language of the constitutional provision, including the explicit requirements of "costs" of a "new program or higher level of service" as well as the purpose of the voters in seeking to prevent new, unfunded mandates in light of the spending limits of California Constitution, article XIII B. ([County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46, 56 \[233 Cal.Rptr. 38, 729 P.2d 202\]](#) (*County of Los Angeles*)). [Section 6](#) does not provide subvention for every increased cost mandated by state law. (*Lucia Mar, supra*, [44 Cal.3d at p. 835.](#)) The court in *County of Los Angeles* confirmed that the voters had not intended that all local costs resulting from compliance with state law would be reimbursable, but intended to prevent: "the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles, supra*, [43 Cal.3d at p. 56.](#))

(4b) The trial court determined that [section 6](#) does not require an actual expenditure of funds as a prerequisite to reimbursement. The court indicated that *Lucia Mar, supra*, [44 Cal.3d 830](#), and *County of San Diego, supra*, [15 Cal.4th 68](#), held that no actual cost need be shown if the state has in fact shifted a financial burden to local government. However, the court failed to note that in both *Lucia Mar* and *County of San Diego*, the shift of responsibility to

local government resulted in actual expenditures by those entities. In *Lucia Mar*, for example, the state attempted to collect the actual dollar amounts claimed for use of the state schools from the local districts by sending invoices to the schools. (*Lucia Mar*, *supra*, [44 Cal.3d at pp. 832-833.](#)) Similarly, in *County of San Diego*, *supra*, [15 Cal.4th 68](#), the county had to expend funds to provide health care services for a population formerly served solely by the state. San Diego County had a direct and ascertainable cost resulting from the state's action. (*Id.* at pp. 79- 80.)

In this case, the County's tax revenues were not expended. No invoices were sent, no costs were collected, and no charges were made against the counties in this case. Contrary to the conclusion of the trial court, it is the expenditure of tax revenues of local governments that is the appropriate focus of [section 6](#). (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*) [stating that [§ 6](#) was "designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues."].)

An examination of the intent of the voters and the language of Proposition 4 itself supports our conclusion that Proposition 4 was aimed at controlling ***1284** and capping government spending, not curbing changes in revenue allocations. [Section 6](#) is an obvious compliment to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit. [Section 6](#), located within a measure aimed at limiting expenditures, is expressly concerned with "costs" incurred by local government as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas. ([§ 6](#).) "No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes." (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987 [64 Cal.Rptr.2d 270] [Cal. Const., art. XIII B intended to limit spending of the proceeds from taxes].)

Aside from the implications to be drawn from the location of [section 6](#) within the spending limitations of Proposition 4, the Legislature has interpreted

California Constitution, article XIII B in subsequent statutes. (6) Where a constitutional provision may have different meanings, " '... ' it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well nigh, if not completely, controlling." ...' " (*Arcadia*, *supra*, [16 Cal.App.4th at p. 452.](#))

(4c) [Government Code sections 17500](#) through [17630](#) were enacted by the Legislature to implement [section 6](#). (*County of Fresno*, *supra*, [53 Cal.3d at p. 484.](#)) [Government Code section 17514](#) defines "costs mandated by the state" for purposes of [section 6](#) as "any increased costs which a local agency or school district is *required to incur* after July 1, 1980, as a result of any statute ... which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." (Italics added.) [Government Code section 17522](#) defines "annual reimbursement claim" to mean "a claim for *actual costs incurred*" (Italics added.) Similarly, [Government Code section 17558.5](#) refers to a claim for "*actual costs* filed by a local agency" (Italics added.) The obvious view of the Legislature is that reimbursement is intended to replace actual costs incurred, not as compensation for revenue that was never received. The Legislature's view is entitled to significant weight. (*Arcadia*, *supra*, [16 Cal.App.4th at pp. 452-453.](#))

The County argues that if an actual cost is required for subvention, the reduced allocation of tax revenues challenged here should be considered ***1285** such a cost. But, as noted by the Commission in its brief in support of appellant, when reimbursement for lost revenues is intended by the Constitution, it is clearly expressed. For example [article XIII, section 8.5 of the California Constitution](#) regarding postponement of property taxes provides for subvention to local government in "an amount equal to the amount of revenue lost by each by reason of the postponement of taxes" [Section 25 of article XIII of the California Constitution](#), regarding the homeowners property tax exemption, provides for reimbursement to local government "for revenue lost because of [Section 3\(k\)](#)." The presence of these references to reimbursement for lost revenue in [article XIII](#) supports a conclusion that by using the word "cost" in [section 6](#) the voters meant the common meaning of cost as an expenditure or expense actually incurred.

In light of the constraints imposed by the rules

regarding strict construction of constitutional limitations on the power of the Legislature, and the rule that requires respect for the Legislature's adoption of a particular meaning of a constitutional phrase, we cannot extend the provisions of [section 6](#) to include concepts such as lost revenue, that are not fairly implicated by the history, voter materials, language and legislative interpretation of [section 6](#). We can only conclude that when the Constitution uses "costs" in the context of subvention of funds to reimburse for "the costs of such program," that some actual cost must be demonstrated, and not merely decreases in revenue. [FN17]

FN17 We are not alone in this conclusion. In *City of El Monte, supra*, [83 Cal.App.4th 266](#), the court rejected a similar claim for subvention brought by a special district, finding that allocating revenues among local entities did not amount to a reimbursable state mandate.

*Subvention Cases Involve Programs Previously
Funded Exclusively by the
State*

The trial court stated that *Lucia Mar, supra*, [44 Cal.3d 830](#), and *County of San Diego, supra*, [15 Cal.4th 68](#), held that whenever a state shifts a burden to local government, it has established a new program or higher level of service for purposes of subvention. The trial court believed that so long as the local entity could demonstrate a financial burden had been shifted, subvention was necessary irrespective of actual costs or prior funding of the program. Like the trial court, the Counties insist that *Lucia Mar* and *County of San Diego* involve striking similarities to this case and establish that any shift in funding is a new program for purposes of subvention. But there is a critical difference, aside from the issue of actual costs expended, between the facts of *Lucia Mar* and *County of San Diego*, and this case. The programs at issue in the cited cases were entirely funded by the state at the time [section 6](#) became effective. *1286

The County argues that *Lucia Mar* involved a situation in which the state attempted to return to local school districts the cost of educating students at special state schools, a cost the state assumed after Proposition 13. However, any apparent similarity to the reallocation brought about by the ERAF legislation is only superficial. *Lucia Mar* concerned a

statute that required a school district to pay part of the cost of educating students from the local district at a state school for the severely handicapped. By July 1, 1980 (the date that [§ 6](#) became effective), the state had already assumed the entire responsibility for funding of the state school program. The *Lucia Mar* court found that it violated the purpose of [section 6](#) to compel local governments to "accept financial responsibility in whole or in part for a program which was *funded entirely by the state* before the advent of [article XIII B](#)" (*Lucia Mar, supra*, [44 Cal.3d at p. 836](#), italics added.) Thus, the facts of *Lucia Mar* involved the transfer of costs from a totally state-funded program to the local governmental entities.

County of San Diego, supra, [15 Cal.4th 68](#), said by the Counties to extend *Lucia Mar* to a de facto shift of financial responsibility, involved the care of medically indigent persons (MIP) who were not linked to a federal category of disability, but only lacked the income and resources to afford health care. (*Id.* at p. 77.) In 1971, the state extended Medi-Cal coverage to these individuals. At the time the voters adopted [section 6](#), the state provided health care funding for MIP's without any financial contribution from the counties. In 1983 the state excluded those individuals from the Medi-Cal program. ([15 Cal.4th at p. 98](#).) An existing statute made the counties responsible for treating indigent persons who did not qualify for other aid. (*Id.* at p. 92.) The result of the state's exclusion of the MIP population from Medi-Cal was that their care fell to the counties as providers of last resort under the statute.

The opening paragraph of Justice Chin's opinion in *County of San Diego* expresses this critical part of the holding. "[W]hen the electorate adopted [section 6](#), the state provided Medi-Cal coverage to these medically indigent *adults without requiring financial contributions from counties*." (*County of San Diego, supra*, [15 Cal.4th at p. 75](#), italics added.) This point was amplified in a response to the dissent. "We do not hold that 'whenever there is a change in a state program that has the effect of increasing a county's financial burden ... there must be reimbursement by the state.' ... Rather, we hold that [section 6](#) prohibits the state from shifting to counties the costs of state programs for which the state assumed *complete financial responsibility before adoption of section 6*." (*Id.* at p. 99, fn. 20, italics added.) *1287

The Counties have ignored the key point in both *Lucia Mar* and *County of San Diego*, that in both cases, the state shifted some part of its sole financial

responsibility to the local entity. The forced acceptance of that new financial cost implicates [section 6](#). Neither *Lucia Mar* nor *County of San Diego* held that subvention would be required for a change in allocation of the percentage of responsibility for a program that has always been jointly funded by state and local governments. The unifying concept in those cases was the transfer of actual costs of a program that had been entirely funded by the state at the time [section 6](#) went into effect.

In this case, on July 1, 1980, the funding of education in California was still a joint endeavor between the state and local governments, subject to changing allocations of responsibility. "The system of public school support should effect a partnership between the state, the county, and school districts, with each participating equitably in accordance with its relative ability." ([Ed. Code, § 14000.](#)) The financing of public schools in California has been, and remains, a complex and sometimes convoluted system of joint responsibility between state and local government. (*Butt v. State of California, supra*, [4 Cal.4th 668, 679, fn. 11](#) [describing the Legislature's complex financing scheme utilizing local property tax revenues and state equalizing payments]; *Hayes, supra*, [5 Cal.App.4th at p. 1525.](#)) [FN18] Funding for education had not been, and never was fully assumed by the state. As expressed by the court in *Sasaki, supra*, [23 Cal.App.4th 1442, 1457.](#) "there is a historical fluidity in the fiscal relationship between local governments and schools. The state has shifted property tax revenue both from schools to local governments, and, as in this case, from local governments to schools. These shifts, including the one presently complained of, have been made in the context of comprehensive legislative planning for the funding of both entities from a variety of sources, including property tax revenue."

FN18 "Fewer still would deny that financing the public educational system in this state is Byzantine in its intricacy and complexity." (*Hayes, supra*, [5 Cal.App.4th at p. 1525.](#))

Unlike the *Lucia Mar* and *County of San Diego* cases, there is no shift in this case from a totally state-supported status to a forced sharing on the part of local government. The state has not imposed responsibility for any program that local governments have not always had a substantial share in supporting.

(*Accord, City of El Monte, supra*, [83 Cal.App.4th 266](#) [*Lucia Mar* involved program expenses entirely borne by state].)

The County argues that a number of subvention cases support its contention that the "bedrock" of analysis of any [section 6](#) claim is only whether there was a shift of financial responsibility to local government. However, *1288 those other subvention cases, which we discuss next, do not address the issues raised in this case as clearly as *Lucia Mar* and *County of San Diego*. Nothing in those cases focuses on a shift of responsibility alone as the keystone of subvention analysis. Rather, the cited cases have turned on other factors. None of the cases found subvention appropriate where the state had not required a local entity to assume financial responsibility for a formerly state funded program. No case holds that changes in the allocation of budgetary amounts to local entities must be offset by subvention.

The other cases regarding reimbursement do not turn on the existence of a shift in only a portion of a jointly funded program. In *Long Beach Unified Sch. Dist. v. State of California* (1990) [225 Cal.App.3d 155](#) [[275 Cal.Rptr. 449](#)], the school district sought reimbursement for the cost of developing desegregation programs. (*Id. at pp. 164-165.*) The court required a specific state mandated action to trigger subvention. The court stated that a mere increase in the cost of providing a service does not trigger reimbursement. (*Id. at p. 173.*) Similarly, in *Hayes v. Commission on State Mandates* (1992) [11 Cal.App.4th 1564](#) [[15 Cal.Rptr.2d 547](#)], school districts sought reimbursement for the cost of providing due process hearings in connection with state mandated special education evaluation programs that the districts argued exceeded costs necessitated by federal requirements. ([11 Cal.App.4th at p. 1574.](#)) The court determined that a federal mandate would not require state subvention, except "[t]o the extent the state implemented the [federal] act by freely choosing to impose new programs" (*Id. at pp. 1593-1594.*) In *Redevelopment Agency v. Commission on State Mandates, supra*, [55 Cal.App.4th 976](#), subvention was not appropriate because the financing received by the agency was deemed exempt from [section 6](#). That court also noted that the state was not transferring a program for which it was "formerly legally and financially responsible." [FN19] (*Redevelopment Agency, supra*, [55 Cal.App.4th at pp. 986-987.](#)) *1289

FN19 Cases that rejected claims of reimbursement similarly did not focus on shifting allocations in joint programs. In *City of Sacramento, supra*, [50 Cal.3d 51](#), the court merely determined that legislation extending unemployment insurance coverage to local government employees was not unique to local government and did not come within [section 6](#). Similarly, in *County of Los Angeles, supra*, [43 Cal.3d 46](#), the court found that extension of workers' compensation benefits to government employees was not unique to government and not covered by [section 6](#). In *County of Fresno, supra*, [53 Cal.3d 482](#), the court stated that reimbursement is not required where a local agency has authority to levy assessments sufficient to pay for the program. *City of San Jose, supra*, [45 Cal.App.4th 1802](#) involved a city's claim for reimbursement for fees charged by counties for booking city arrestees into county jail. If anything, this case supports the Commission's decision because reimbursement was refused for an allocation among the counties, rather than for a state funded program. (*Id.* at p. 1812; see also *City of El Monte, supra*, [83 Cal.App.4th 266](#) [*City of San Jose* denied subvention for shifting of funds among local entities].)

We do not find a single case, statute, or administrative ruling that indicates the shifting of percentage allocations of financial responsibility for joint state and locally funded programs requires reimbursement to the local government whenever it receives less money than it did in the previous budget year. The critical point in the analysis is that school funding in California was, at the time [section 6](#) became effective, a jointly funded partnership between the state and local governments. These joint budget allocations are not subject to [section 6](#). To hold otherwise would impermissibly cripple the ability of the Legislature to function in the critical area of budget planning.

Proposition 98 Confers No Right of Subvention on the County

(7) An important premise of the County's argument is that Proposition 98 imposes a requirement that the state may use only funds from the state's General

Fund to satisfy the minimum level of school finance. According to the County, if the state uses any other type of funding to satisfy the minimum amount, it must repay whatever source was used. It is this claimed impermissible use of the revenue not allocated to the County that supports the claim of subvention in this case. The County argues that it can trace the state's use of the unallocated revenue, through the provisions of [Education Code section 41204.5](#), to a reduction in the Proposition 98 minimum funding amounts, which proves the County's claim that it was mandated to assume the cost of a program that was previously solely funded by the state. [FN20] The reality is that the County has no claim to revenues it never received and has no basis for challenging the state's methods of allocating funds to other entities.

FN20 [Education Code section 41204.5](#) deems the words "percentage of General Fund revenues appropriated for school districts ... in fiscal year 1986-87" for purposes of the first test of Proposition 98's minimum funding provisions to be calculated as though the ERAF legislation had been in effect in the 1986-1987 fiscal year. This provision has the consequence of decreasing the amount the state contributes towards the minimum school funding guarantee.

Proposition 98, adopted by the voters in 1988, amended [article XVI, section 8 of the California Constitution](#) to provide a minimum level of funding for schools. (Ballot Pamp., Gen. Elec. (Nov. 8, 1988) p. 78.) The measure, supported by the California Teachers Association and the state Parent-Teacher Association, set up two tests, later expanded by the passage of Proposition 111 in 1990 to three tests, for determining the mandated minimum funding level for the coming year. (*Hayes, supra*, [*12905 Cal.App.4th at p. 1519, fn. 2.](#)) [FN21] The first formula uses a percentage of General Fund revenues appropriated to schools in fiscal year 1986-1987. The second and third formulas use a measure that includes both General Fund revenues and "allocated local proceeds of taxes." ([Cal. Const., art. XVI, § 8](#), subd. (b).)

FN21 [Section 8 of article XVI](#) provides the following three tests: "(b) Commencing with the 1990-91 fiscal year, the moneys to be

applied by the State for the support of school districts and community college districts shall be not less than the greater of the following amounts: [¶] (1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to [Article XIII B](#), equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87. [¶] (2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to [Article XIII B](#) and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of [Section 8.5](#), adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of [Section 8 of Article XIII B](#). This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent. [¶] (3)(A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to [Article XIII B](#) and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of [Section 8.5](#), adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues." ([Cal. Const., art. XVI, § 8](#), subd. (b).)

In arguing that Proposition 98 establishes a wholly state-funded program that they have been forced to finance, the Counties misconstrue the impact of Proposition 98. Proposition 98 did not alter the state's role in education. (*Hayes, supra*, [5 Cal.App.4th at p. 1533](#).) Proposition 98 does not appropriate funds nor does it result in some mandated county program or higher level of service that the Counties had not previously supported through property tax allocations. The power to appropriate funds was left

in the hands of the Legislature. Proposition 98 merely provides the formulas for determining the minimum to be appropriated every budget year. The state's obligation is to ensure specific amounts of moneys are applied by the state for education. Budgetary decisions that allocate funds to various agencies of the state or political subdivisions cannot be placed in the category of mandates that require subvention. Such decisions, of necessity, impact different agencies of the state or political subdivisions, with some getting more funds as others get less. Sometimes Peter receives more than Paul. We perceive no intent in Proposition 98's concern for an appropriate level of funding for education that would tie the hands of the Legislature in meeting that goal, particularly in years of low revenues.

Furthermore, local governments do not have a claim to a specified portion of the budget in each budget year. We recognize that the trial court found *1291 that the County had not asserted a claim of entitlement, but the belief in such an entitlement is a necessary foundation for the claim for subvention. The County's case, stripped to its core complaint, is that the County's revenue decreased in the challenged years, not that the Legislature found a different way to meet the Proposition 98 funding requirements for schools. Absent some entitlement to the claimed revenues, the County cannot prevail in this action for reimbursement.

As noted by the court in *San Miguel, supra*, [25 Cal.App.4th 134](#), the plaintiffs there had "no 'vested right' to receive property tax revenues [citation] and no 'property interest' in such revenues [citation] because 'as against the state, the county [or district] has no ultimate interest in the property under its care.' [Citation.]" (*Id.* at p. 143, italics omitted.) The County in this case argues that *San Miguel* was based on an erroneous historical analysis. The County notes that *San Miguel* relied on [Conlin v. Board of Supervisors \(1893\) 99 Cal. 17 \[33 P. 753\]](#), which predated a 1910 amendment to the Constitution. This reliance, the County contends, reveals the mistaken analysis of the *San Miguel* court because the 1910 amendment to the Constitution provided for strict separation of state and local revenue. Aside from the fact that one accepted purpose of Proposition 13 was to establish state, as opposed to local, control over local property taxes, the *San Miguel* court relied on cases as recent as [Board of Supervisors v. McMahon \(1990\) 219 Cal.App.3d 286 \[268 Cal.Rptr. 219\]](#), which also made it clear that "as against the state, the County has no 'property' interest in its revenues.

'[A]ll property under the care and control of a county is merely held in trust by the county for the people of the entire state." (*Id.* at p. 297, italics omitted [county may not challenge state's aid to families with dependent children funding statute requiring county to contribute to state program].) In *Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495 [188 Cal.Rptr. 828], this court rejected an argument that a local agency had a vested right to receive tax revenues. (*Id.* at pp. 501-502.) We agree with the *San Miguel* court that political subdivisions of the state have no basis for challenging revenue allocations to another agency and no right to receive a particular allocation of tax revenues themselves.

We also note that even if the Counties prevailed on this argument and the Legislature's reduction of the General Fund component of the guaranteed minimum financing to schools was invalidated, the Counties would not receive any payment as a result. The only consequence of invalidation of the change in the state's General Fund payment would be that the state would be required to pay more to schools in the challenged years, not that a portion of the school's revenue allocation would be revoked and paid to the Counties. *1292 This outcome highlights the reality that the Counties have no legally cognizable interest that would entitle them to challenge the Legislature's manner of funding education. The inclusion of a discussion of Proposition 98 and minimum funding for schools serves only to confuse the issues properly raised in this appeal from a decision ordering subvention for a reduction in revenues.

It is clear from the trial court's opinion that the injection of the Proposition 98 issues into the case obscured the real issues and distorted the outcome below. For example, the trial court framed the issue as being whether "the state can use property taxes to fulfill its obligation to provide funding for schools from the state general fund." As discussed, local governments have no interest in invalidating state funding allocations to schools. From this mistaken hypothesis, the court made the erroneous determination that because funding a portion of the school budget is solely the state's responsibility, a change in the source of the funding of that portion of the school program implicated principles of subvention.

In its review of the County's claim, the Commission properly focused its inquiry, in conformance with the appropriate narrow construction given to limitations on the Legislature's taxing powers, on whether the

reduction in revenues caused by the ERAF legislation required the Counties to expend tax revenues in support of a state program. (*City of El Monte, supra*, 83 Cal.App.4th 266 [Prop. 98 not properly before court on subvention appeal].)

Understanding that the argument of the Counties is at once too narrow and too broad is critical to reaching a correct result in light of the need for a narrow construction of limitations on the state's power to allocate tax revenues. The Counties' argument is too narrow in that it focuses on one aspect of school finance—the minimum funding of Proposition 98—to claim that education is solely a state funded program. The Counties ignore the larger picture that education is and always has been a jointly funded program. The argument is too broad because it encompasses the whole of the budget process for the questioned years in a misguided attempt to trace the decreased revenues to some impermissible use, rather than focusing on the decrease in revenue to the County. In fact, the Counties never received the disputed revenue, and the Counties have no standing to challenge budget allocations to other entities. The Commission properly limited its review of the subvention claim to the decreased allocation of revenue that resulted from the ERAF legislation.

Home Rule Has Not Been Abolished

(8) Returning to an argument considered and rejected in *Amador Valley, supra*, 22 Cal.3d 208, *1293 *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929 [46 Cal.Rptr.2d 448], and *Sasaki, supra*, 23 Cal.App.4th 1442, the County contends that the Legislature's decrease of its property tax revenues violates principles of home rule. [FN22] As all of the referenced cases have concluded, from the time of Proposition 13 to the present, home rule has been limited, but not extinguished. As previously noted, this appeal is solely from a subvention decision and does not properly place before us a challenge to the validity of the state's actions. Although the issue of reallocation of local property tax revenues and home rule has been definitively discussed in prior cases, we again note them in response to the County's and amici curiae's repeated raising of this argument.

FN22 The Counties referenced home rule, while the amicus curiae brief submitted by numerous California cities expanded on the origins and nature of home rule.

The principle of home rule refers to a local government's power to control and finance its own local affairs. (*Amador Valley, supra*, [22 Cal.3d at pp. 224-225.](#)) In *Amador*, the court upheld Proposition 13 against a claimed impairment of home rule. The court recognized that a limitation on the ability to levy taxes had a limiting effect on home rule, but stated that nothing in the proposition abrogates home rule "or discloses any intent to undermine or subordinate preexisting constitutional provisions on that subject" ([22 Cal.3d at p. 225.](#)) The key reason that the court found that home rule was not improperly infringed was that the funds at issue in that case were allocated to local agencies on a pro rata basis, "without imposing any condition whatever regarding their ultimate use." (*Id.* at p. 227.)

In *City of Rancho Cucamonga v. Mackzum, supra*, [228 Cal.App.3d 929](#), the court recognized that "the purpose of Proposition 13 itself was to achieve statewide control over escalating local property tax rates." (*Id.* at p. 945.) The court determined that Proposition 13 was a grant of authority to the Legislature to act in an area of statewide concern, and therefore, controlled over the home rule taxing power of charter cities. ([228 Cal.App.3d at p. 945.](#)) The court concluded that although the home rule power was limited, it was not repealed.

When considering the same objection in relation to the ERAF legislation that supports the claim in this appeal, the court in *Sasaki, supra*, [23 Cal.App.4th 1442](#), found that shifting property tax revenues away from local governments did not result in impermissible infringement on the home rule powers. (*Id.* at p. 1457.) Neither the record in this case nor the ERAF legislation suggests that the Legislature has infringed upon the County's discretionary affairs so as to interfere with the rights of local residents to home rule. We agree with the analysis of the foregoing cases and reject the *1294 County's attempt to interpose home rule as a bar to budget allocation decisions.

Conclusion

The state is not obligated to reimburse local governments for the challenged change in allocation of property tax revenues among local entities. The reallocation of revenue resulting from the challenged legislation imposes no reimbursable cost on local governments and is neither a "new program" nor a

"higher level of service" within the meaning of the Constitution. The Legislature is the proper forum to address those perceived inequities and to seek fiscal relief. The judgment of the superior court is reversed and remanded with instructions to enter a new judgment denying the petition for writ of mandate. In the interests of justice each party should bear its own costs on appeal.

Strankman, P. J., and Swager, J., concurred.

A petition for a rehearing was denied December 19, 2000, and the opinion was modified to read as printed above. The petition of plaintiff and respondent and interveners and respondents for review by the Supreme Court was denied February 28, 2001. Kennard, J., and Baxter, J., were of the opinion that the petition should be granted. *1295

Cal.App.1.Dist.,2000.

COUNTY OF SONOMA, Plaintiff and Respondent,
v. COMMISSION ON STATE MANDATES,
Defendant and Respondent; DEPARTMENT OF
FINANCE et al., Real Parties in Interest and
Appellants; COUNTY OF AMADOR et al.,
Interveners and Respondents.

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CARMEL VALLEY FIRE PROTECTION
 DISTRICT et al., Plaintiffs and Appellants,
 v.
 THE STATE OF CALIFORNIA et al., Defendants
 and Respondents.

No. S078828.

Supreme Court of California

Apr. 5, 2001.

SUMMARY

A fire protection district submitted a claim to the Commission on State Mandates requesting a determination that the state was obligated to reimburse the district for funds it spent on protective clothing and equipment for firefighters in compliance with orders promulgated by the state Department of Industrial Regulations. After the commission denied the district's claim, the district filed a petition for a writ of mandate and declaratory relief. The trial court denied the petition, finding that the orders were validly suspended by the Legislature pursuant to [Gov. Code, § 17581](#), which permits the Legislature to suspend the operation of statutes and executive orders that constitute state-mandated local programs and to withdraw funding therefor. (Superior Court of Los Angeles County, No. BS041545, Robert H. O'Brien, Judge.) The Court of Appeal, Second Dist., Div. One, No. B113383, reversed, finding that [Gov. Code, § 17581](#), violated the separation of powers doctrine.

The Supreme Court reversed the judgment of the Court of Appeal and remanded for further proceedings. The court held that the statute did not violate the separation of powers clause of the California Constitution ([Cal. Const., art. III, § 3](#)) by encroaching on the power of the executive branch of government. The decision to relieve districts of the duty to comply with specified executive orders is a policy decision—an act within the authority of the Legislature, although it incidentally affects the legislatively enacted authority of the Department of Industrial Relations to promulgate regulations. The fact that the department may have had concurrent

authority to alter or rescind the regulations, within the bounds of its statutory authority, did not suggest that the Legislature lacked authority over the matter. The Legislature is the branch of government that, on a yearly basis, must fit the needs of the state into the available funds and must consider many legitimate and pressing calls on the state's resources, in addition to the safety of firefighters. Nothing prohibits the Legislature from circumscribing the authority of an *288 administrative agency in certain particulars without withdrawing its general delegation of rulemaking authority to the administrative agency. (Opinion by George, C. J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#), [1c](#), [1d](#)) Constitutional Law § 39--Distribution of Governmental Powers--Separation of Powers--Legislative Power--Suspension of Administrative Regulations Mandating Firefighter Safety Equipment.

[Gov. Code, § 17581](#), and certain budget measures that suspended administrative regulations of the Department of Industrial Relations requiring firefighting districts to provide protective clothing and equipment to firefighters, and withhold state reimbursement therefor, did not violate the separation of powers clause of the California Constitution ([Cal. Const., art. III, § 3](#)) by encroaching on the power of the executive branch of government. The decision to relieve districts of the duty to comply with specified executive orders is a policy decision—an act within the authority of the Legislature, although it incidentally affects the legislatively enacted authority of the department to promulgate regulations. That the department may have had concurrent authority to alter or rescind the regulations, within the bounds of its statutory authority, did not suggest that the Legislature lacked that authority. The Legislature is the branch that, on a yearly basis, must fit the needs of the state into the funds available and must consider many legitimate and pressing calls on the state's resources, in addition to the safety of firefighters. Nothing prohibits the Legislature from circumscribing the authority of an administrative agency in certain particulars without withdrawing its

general delegation of rulemaking authority to the administrative agency. The legislative branch legitimately may employ its power of the purse to control executive action.

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 129 et seq.]

(2) Constitutional Law § 36--Distribution of Governmental Powers--Between Branches of Government--Separation of Powers.

The separation of powers doctrine limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch. To serve this purpose, courts have not hesitated to *289 strike down provisions of law that either accrete to a single branch powers more appropriately diffused among separate branches or that undermine the authority and independence of one or another coordinate branch. The doctrine, however, recognizes that the three branches of government are interdependent, and it permits actions of one branch that may significantly affect those of another branch. The purpose of the doctrine is to prevent one branch of government from exercising the complete power constitutionally vested in another; it is not intended to prohibit one branch from taking action properly within its sphere that has the incidental effect of duplicating a function or procedure delegated to another branch.

(3) Constitutional Law § 36--Distribution of Governmental Powers--Legislative Power--Limits.

Because the Legislature is the branch of government most likely to encroach upon the power of the other branches, the principle of separation of powers prohibits the legislative branch from arrogating to itself core functions of the executive or judicial branches. Legislative power also is circumscribed by the requirement that legislative acts be bicamerally enacted and presented to the head of the executive branch for approval or veto ([Cal. Const., art. IV, § 1, 8](#), subd. (b), 10, subd. (a)).

(4) Legislature § 5--Powers.

The core functions of the legislative branch include passing laws, levying taxes, making appropriations, and formulating legislative policy. The power to collect and appropriate the revenue of the state is one peculiarly within the discretion of the Legislature. Executive power over appropriations is limited and is set out in the state Constitution, which provides that each year the Governor shall submit a proposed budget to the Legislature ([Cal. Const., art. IV, § 12](#)) and that each bill, including the budget bill, shall be

presented to the Governor for signature or veto ([Cal. Const., art. IV, § 10](#)). Legislative determinations relating to expenditures in other respects are binding upon the executive, who, in expending public funds, may not disregard legislatively prescribed directives and limits pertaining to the use of such funds.

(5) Legislature § 5--Powers--Delegation.

The legislative branch of government, although it is charged with the formulation of policy, may properly delegate some quasi-legislative or rulemaking authority to administrative agencies. For the most part, delegation of quasi-legislative authority to an administrative agency is not considered an unconstitutional abdication of legislative power. The distinction is between delegating power to make the law, which necessarily involves *290 discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under the law. The first cannot be done; the latter can.

(6) Administrative Law § 30--Administrative Actions--Rulemaking--Compliance with Enabling Statute.

An executive agency created by statute has only as much rulemaking power as is invested in it by statute. Administrative actions that are not authorized by, or are inconsistent with, acts of the Legislature are void. The rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency. Regulations that alter or amend the statute or enlarge or impair its scope are void. An executive agency lacks power, for example, to order the disbursement of funds for a purpose contrary to that stated in a legislative enactment.

(7) Legislature § 5--Powers--Appropriations.

An administrative agency is subject to the legislative power of the purse and may spend no more money to provide services than the Legislature has appropriated. The power of appropriation includes the power to withhold appropriations. Neither an executive administrative agency nor a court has the power to require the Legislature to appropriate money.

(8a, 8b) Constitutional Law § 39--Distribution of Governmental Powers--Legislative Power--Limiting Mandate of Administrative Agency.

Considering the appropriate function of the Legislature-to define policy and allocate funds-and considering the inability of an administrative agency, to which quasi-legislative power has been delegated, to adopt rules inconsistent with the agency's governing statutes, a legislative enactment that limits

the mandate of an administrative agency or withdraws certain of its powers is not necessarily suspect under the doctrine of separation of powers. When the Legislature has not taken over core functions of the executive branch and has exercised its authority in accordance with formal procedures set forth in the Constitution, such an enactment normally is consistent with the checks and balances prescribed by the Constitution. (Disapproving [California Radioactive Materials Management Forum v. Department of Health Services](#) (1993) 15 Cal.App.4th 841 [19 Cal.Rptr.2d 357] to the extent it is contrary to the holding that the Legislature may enact a statute limiting the scope of the discretion vested in the director of an administrative agency as long as the limitation does not defeat or materially impair the exercise of executive power.) *291

COUNSEL

Law Offices of William D. Ross, William D. Ross and Carol B. Sherman for Plaintiffs and Appellants.

Lloyd W. Pellman, County Counsel (Los Angeles) and Stephen R. Morris, Principal Deputy County Counsel, for Los Angeles County Consolidated Fire Protection District as Amicus Curiae on behalf of Plaintiffs and Appellants.

Daniel E. Lungren and Bill Lockyer, Attorneys General, Manuel M. Medeiros, Linda A. Cabatic and Allen Sumner, Assistant Attorneys General, Paul H. Dobson, Andrea Lynn Hoch, Marsha A. Bedwell and Daniel G. Stone, Deputy Attorneys General, for Defendants and Respondents State of California, Departments of Finance and Industrial Relations, State Controller Kathleen Connell and State Treasurer Philip N. Angelides.

Camille Shelton for Defendant and Respondent Commission on State Mandates.

GEORGE, C. J.

In this case we consider whether [Government Code section 17581](#) and certain budget measures that suspend the operation of administrative regulations adopted by the Department of Industrial Relations violate the separation of powers clause of the California Constitution by encroaching on the power of the executive branch of government. ([Cal. Const., art. III, § 3.](#)) We conclude that no separation of powers violation has been demonstrated.

I

Executive orders promulgated in 1978 by the Department of Industrial Relations require employers to provide certain items of protective clothing and equipment to employees assigned to firefighting duties. ([Cal. Code Regs., tit. 8, § 3401-3409](#), formerly [8 Cal. Admin. Code, § 3401-3409.](#))

Carmel Valley Fire Protection District and other local fire protection agencies incurred expenses complying with this order and, in earlier proceedings, submitted a claim for reimbursement of state-mandated expenditures pursuant to [California Constitution, article XIII B, section 6](#). In 1987, the districts prevailed in securing reimbursement for these state-mandated expenditures. ([Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795] (*Carmel I.*)) *292

In ensuing years, the state experienced severe fiscal difficulties and undertook various measures to reduce its expenditures. (See Governor's Budget Summary 1992-1993 (Jan. 9, 1992), State and Local Fiscal Relationship, p. 132.) In 1990, the Legislature enacted [Government Code section 17581](#). That provision permits the Legislature to suspend the operation of statutes and executive orders that constitute state-mandated local programs from year to year and to withdraw funding therefor. The Legislature provided in the Budget Act of 1992 that 45 mandates, including the above regulatory requirements regarding protective gear for firefighters, would be suspended pursuant to [section 17581](#) and that no funds would be forthcoming for reimbursement. Of these suspensions, the great majority were of statutory mandates, and only three (including the one presently before us) were regulatory suspensions. (Stats. 1992, ch. 587, item 8885-101-001, provision 4, including items (l), (m), (vv), pp. 2604-2609.) Ensnuing budget acts contained the same suspension of the regulatory mandate at issue in the present case, as well as suspension of numerous predominantly statutory mandates. (See Stats. 1993, ch. 55, item 8885-101-001, provision 4, item (uu), pp. 763-768 [43 mandates suspended]; Stats. 1994, ch. 139, item 885-101-001, provision 4, item (w), pp. 1213-1217 [26 mandates suspended].) [FN1]

FN1 The suspension has continued in effect through the 2000-2001 fiscal year. (See,

e.g., Stats. 2000, ch. 52, item 8350-295-0001, provision 3, item (b).)

On September 5, 1995, the Carmel Valley Fire Protection District, joined by the Alpine Fire Protection District, the Bonita-Sunnyside Fire Protection District, the City of Glendale, the City of Anaheim, the Ventura County Fire Protection District, the San Ramon Valley Fire Protection District, the American Canyon Fire Protection District (a subsidiary district of the City of American Canyon), the Salida Fire Protection District, the West Stanislaus Fire Protection District, the Sacramento County Fire Protection District, the Humboldt No. 1 Fire Protection District, the Samoa-Peninsula Fire Protection District, and the Mammoth Lakes Fire Protection District (collectively referred to as the districts) filed with the Commission on State Mandates (the Commission) a consolidated claim for reimbursement of the expenses they had incurred in supplying their employees with the protective gear noted in the regulations. On June 27, 1996, the Commission rejected the consolidated claim, relying upon [Government Code section 17581](#) and the budget language that deleted funding for this expense.

On October 8, 1996, the districts filed a petition for writ of mandate and complaint for declaratory relief against the State of California, the Commission, the State Department of Finance, the State Department of Industrial Relations, the State Controller, and the State Treasurer, seeking an order that *293 their claims for expenditures from 1992, 1993, and 1994 be paid from specified existing appropriations. Among other contentions, the districts claimed that [Government Code section 17581](#) and the budget language suspending the mandate for firefighters' equipment violated the separation of powers clause of the California Constitution ([Cal. Const., art. III, § 3](#)) by purporting to permit the Legislature to veto executive action.

On April 30, 1997, the trial court denied the petition for writ of mandate and dismissed the declaratory relief action. It declared: "[Government Code section 17581](#) having been satisfied, the mandate of [California Code of Regulations Title 8, sections 3401-3409](#), requiring that petitioners provide their employees with specified equipment and clothing, was suspended by operation of the Budget Acts of 1992, 1993 and 1994, thereby making the provision of such equipment and clothing optional on the part of petitioners."

The trial court also concluded that the Legislature had not "usurp[ed] ... executive functions" in violation of the separation of powers clause of the California Constitution.

The districts appealed. As in the trial court, they challenged the suspension of the administrative mandate on several grounds, including the claim that the suspension violated the separation of powers clause of the California Constitution. The Court of Appeal reversed the judgment of the trial court, determining that [Government Code section 17581](#), as applied to the districts, constituted a violation of the constitutional separation of powers provision. Because the appellate court reached this conclusion, it did not address the districts' other claims, including a claimed violation of the single-subject rule of the California Constitution. ([Cal. Const. art. IV, § 9.](#))

We granted respondents' petition for review challenging the conclusion of the Court of Appeal with respect to the claimed violation of the separation of powers clause of the state Constitution.

II
A

To begin our analysis, we describe the statutory background of the administrative orders at issue in the present case, and note the conflict that has occurred over the provision of funding to carry out these orders. [FN2]

FN2 We grant the districts' request that we take judicial notice of portions of the state budget acts enacted in 1997 and 1998. ([Evid. Code, § 451](#), subd. (a).) We also grant the state's request that we take judicial notice of portions of the Governor's budget summaries from fiscal year 1992-1993 to fiscal year 1999-2000. ([Evid. Code, § 452](#), subd. (c).)

In 1973, the Legislature enacted the California Occupational Safety and Health Act (Cal/OSHA). ([Lab. Code, § 6300](#) et seq.) The purpose of the act *294 is to ensure "safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, [and] assisting and encouraging employers to maintain safe and healthful working conditions" ([Lab. Code, § 6300.](#)) The Occupational Safety and Health Standards Board within the Department of

Industrial Relations is responsible for adopting occupational safety and health standards and orders. ([Lab. Code, § § 140, 142.3, 6305.](#)) It is pursuant to this authority that the executive orders here at issue, relating to protective equipment, were adopted in 1978.

[Article XIII B, section 6 of the California Constitution](#) provides, with exceptions not applicable here, that "[w]henever 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 program or increased level of service" [FN3]

FN3 This constitutional provision was adopted in 1979; similar reimbursement requirements previously were imposed by statute. (See former Rev. & Tax. Code, § 2231, subd. (a), added by Stats. 1975, ch. 486, § 7, p. 999; see also former Rev. & Tax. Code, § 2207, added by Stats. 1975, ch. 486, § 1.8, pp. 997-998; former Rev. & Tax. Code, § 2164.3, subd. (a), as added by Stats. 1972, ch. 1406, § 14.7, p. 2962, amended by Stats. 1973, ch. 208, § 51, p. 564.)

Despite existing statutory provisions requiring reimbursement of expenditures for state-mandated local programs, however, the Legislature when it adopted Cal/OSHA also enacted uncodified measures stating that the costs of compliance with regulations imposed pursuant to Cal/OSHA were not subject to reimbursement, on the theory that the costs were minimal and that Cal/OSHA merely restated a federal mandate. (Stats. 1973, ch. 993, § 106, p. 1954; Stats. 1974, ch. 1284, § 36, p. 2787.) In later years, the Legislature appended control language to budget items appropriating funds for reimbursement of state mandates, stating with particularity that no application for reimbursement of the cost of compliance with the Cal/OSHA regulations ([Cal. Code Regs., tit. 8, § § 3401-3409](#)) regarding protective gear for firefighters would be processed. (See, e.g., Stats. 1981, ch. 1090, § 3, p. 4193.)

In 1987, in *Carmel I, supra*, [190 Cal.App.3d 521](#), the Court of Appeal examined this uncodified language in light of the districts' claim for reimbursement for expenses of firefighters' safety equipment. The appellate court rejected as unfounded the

Legislature's declaration that it need not provide reimbursement for expenditures required by Cal/OSHA because Cal/OSHA simply restated a federal mandate. That court concluded that pursuant to [*295 article XIII B, section 6 of the California Constitution](#), expenses incurred to comply with the 1978 regulations at issue in the present case were state-mandated local expenses and that the districts were entitled to reimbursement.

The Court of Appeal also declared that the budget control language was invalid because it violated the state constitutional requirement that a bill have only a single subject. ([Cal. Const., art. IV, § 9.](#)) The appellate court explained that the statement that no application would be *processed* for reimbursement of expenses incurred to comply with Cal/OSHA orders was unrelated to the ostensible subject of the bill-appropriations for reimbursement of state-mandated local programs. (*Carmel I, supra*, [190 Cal.App.3d at pp. 541- 545.](#)) That court declared that nothing in the bill "alert[s] the reader to the fact that the bill prohibits the Board [of Control] from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo." (*Id.* at p. 545.)

Apparently at least in part in response to this decision, in 1990 the Legislature enacted [Government Code section 17581](#), which provides in pertinent part: "(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year ... if all of the following apply: [¶] (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission [on state mandates], or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to [Section 6 of Article XIII B of the California Constitution](#). [¶] (2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year." [Section 17581](#) also provides that if an agency nonetheless elects to implement such a statute or order, it may assess special fees upon persons or entities benefiting from the implementation. ([Gov. Code, § 17581](#), subd. (b).)

As noted, in the Budget Acts of 1992, 1993, and 1994, the administrative regulations requiring

protective gear for firefighters were identified in the manner noted by [Government Code section 17581](#), and the districts' request for reimbursement for the expenses of compliance was refused.

B

Next, we review the parties' contentions and the reasoning of the Court of Appeal. The districts contend that [Government Code section 17581](#) and the *296 provisions of the Budget Acts of 1992, 1993, and 1994 suspending the administrative regulations here at issue represent an effort by the Legislature to invade the power of the executive branch to carry out its duties under Cal/OSHA, thereby violating the constitutional principle of separation of powers. The districts claim that the Legislature delegated broad authority to the Department of Industrial Relations to enact and enforce regulations to carry out the department's mandate to ensure worker safety, and that the Legislature violated the principle of separation of powers when it purported to retain supervisory control over the manner in which the department executes its duties. The districts conclude that the Legislature usurped the executive power of the department by exempting local agencies from the administrative regulations rather than altering or revoking the department's statutory power over rulemaking and enforcement.

Agreeing with the position of the districts, the Court of Appeal declared that [Government Code section 17581](#) represents an unwarranted intrusion into the operation of the executive branch: "By reason of the separation of powers doctrine, the Legislature's power to declare public policy does not include the power to carry out its declared policies." In the view of the Court of Appeal, the Legislature could not retain supervisory power or veto power over the execution of Cal/OSHA, in the absence of a statute amending or revoking the delegation of executive power over Cal/OSHA, or at least a statute effecting an implied repeal of the Department of Industrial Relations' executive orders. The Legislature, the Court of Appeal said, lacks "the power to cherry-pick the programs to be suspended-which is precisely what the Legislature has done by suspending the operations of only those [identified in the budget]." According to the appellate court, the enactment of [Government Code section 17581](#), far from constituting a revocation of executive power or an implied repeal, constituted an "attempt[] to exercise an unconstitutional veto power over the [department's] administration of Cal/OSHA."

The Court of Appeal concluded that although the Legislature may choose to retain complete control over a function by itself enacting detailed rules, the Legislature cannot retain administrative control when it enacts a statute that provides "broad policy guidance and leave[s] the details to be filled in by administrative officers exercising substantial discretion." The appellate court declared [Government Code section 17581](#) "constitutionally infirm as applied."

The Attorney General, representing the state, the Department of Industrial Relations, the Department of Finance, the State Controller, and the State Treasurer (collectively referred to for convenience as the State) responds that *297 the Legislature has not attempted to control the exercise of executive power, but rather has exercised its own power over appropriations and expenditures. It is within the Legislature's power, the State contends, to suspend an executive mandate in the interest of an appropriate allocation of limited state funds. Once the Legislature has enacted a statute suspending a mandate, it is clear that the executive lacks power to enforce regulations inconsistent with that statute. Executive power is not thereby threatened or frustrated, the State concludes, because the executive branch always is dependent upon the Legislature for funds.

III

(1a) We now consider [Government Code section 17581](#) in light of the constitutional provision for separation of powers, and, as we shall explain, conclude that the statutory and budgetary provisions involved in the present case do not violate the separation of powers clause of the California Constitution.

[Article III, section 3 of the California Constitution](#) states: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

(2) The separation of powers doctrine limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 596 [79 Cal.Rptr.2d 836, 967 P.2d 49]; *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53 [51 Cal.Rptr.2d 837, 913 P.2d 1046] (*Mendocino*); see also *Loving v. United States* (1996) 517 U.S. 748, 757 [116 S.Ct. 1737, 1738-1739, 135

[L.Ed.2d 361.](#)) "The courts have long recognized that [the] primary purpose [of the separation-of-powers doctrine] is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government." (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11], quoting *Parker v. Riley* (1941) 18 Cal.2d 83, 89-90 [113 P.2d 873, 134 A.L.R. 1405]; see also *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 509 [53 Cal.Rptr.2d 789, 917 P.2d 628].) To serve this purpose, courts "have not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 493 [97 Cal.Rptr.2d 334, 2 P.3d 581], quoting *Mistretta v. United States* (1989) 488 U.S. 361, 382 [109 S.Ct. 647, 660, 102 L.Ed.2d 714].) *298

The doctrine, however, recognizes that the three branches of government are interdependent, and it permits actions of one branch that may "significantly affect those of another branch." (*Mendocino, supra*, 13 Cal.4th at p. 52.) In the context of asserted legislative encroachment on the judicial power, for example, although we have invalidated legislative measures that would defeat or materially impair this court's inherent power (see, e.g., *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 339-341 [178 Cal.Rptr. 801, 636 P.2d 1139] [judicial power to discipline attorneys could not be vested in Workers' Compensation Appeals Board]; see also *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 497 [construing a statute so as to preserve the essential judicial function of dismissal, free from interference by the executive]), we have rejected separation of powers claims when no material impairment appeared. (See *Mendocino, supra*, 13 Cal.4th 45, 58-60.) With respect to encroachment on the power of the executive, we observed, in rejecting a claim that a statute providing for the expungement of certain criminal records duplicated the Governor's clemency power in some cases and therefore infringed upon the executive power, in violation of the doctrine of separation of powers: "The purpose of the doctrine is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch." (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014].)

(3) The founders of our republic viewed the legislature as the branch most likely to encroach upon the power of the other branches. (See *Bowsher v. Synar* (1986) 478 U.S. 714, 727 [106 S.Ct. 3181, 3188, 92 L.Ed.2d 583]; *Buckley v. Valeo* (1976) 424 U.S. 1, 129 [96 S.Ct. 612, 687-688, 46 L.Ed.2d 659]; see also Madison, *The Federalist* No. 48 (Cooke ed. 1961) pp. 332-334.) The principle of separation of powers limits any such tendency. First, it prohibits the legislative branch from arrogating to itself core functions of the executive or judicial branch. (See *Younger v. Superior Court, supra*, 21 Cal.3d at pp. 115-117; see also *Wash. Airports v. Noise Abatement Citizens* (1991) 501 U.S. 252, 274-275 [111 S.Ct. 2298, 2310-2312, 115 L.Ed.2d 236] (MWA v. CAAN).) Second, legislative power also is circumscribed by the requirement that legislative acts be bicamerally enacted and presented to the head of the executive branch for approval or veto. (*Cal. Const., art. IV, § 1, 8*, subd. (b), 10, subd. (a); see *California Radioactive Materials Management Forum v. Department of Health Services* (1993) 15 Cal.App.4th 841, 872 [19 Cal.Rptr.2d 357] (*California Radioactive Materials*); *INS v. Chadha* (1983) 462 U.S. 919, 945-951, 958 [103 S.Ct. 2764, 2781-2784, 2787-2788, *299 77 L.Ed.2d 317] (*Chadha*); see also *MWA v. CAAN, supra*, 501 U.S. at p. 275 [111 S.Ct. at pp. 2311-2312].)

(4) The core functions of the legislative branch include passing laws, levying taxes, and making appropriations. (*Cal. Const., art. IV, § 1, 8*, subd. (b), 10, 12; *In re Attorney Discipline System, supra*, 19 Cal.4th 582, 595; see also *Butt v. State of California* (1992) 4 Cal.4th 668, 698 [15 Cal.Rptr.2d 480, 842 P.2d 1240].) "Essentials of the legislative function include the determination and formulation of legislative policy." (*State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 750 [16 Cal.Rptr.2d 727].) Further, it is settled that "the power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the Legislature." (*In re Attorney Discipline System, supra*, 19 Cal.4th 582, 595.) Executive power over appropriations is limited and is set out in the state Constitution, which provides that each year the Governor shall submit a proposed budget to the Legislature (*Cal. Const., art. IV, § 12*; see *Butt v. State of California, supra*, 4 Cal.4th at p. 698) and that each bill, including the budget bill, shall be presented to the Governor for his or her signature or veto. (*Cal. Const., art. IV, § 10*.) Legislative determinations relating to expenditures in other respects are binding upon the executive: "The executive branch, in expending public funds, may not

disregard legislatively prescribed directives and limits pertaining to the use of such funds." (*Mendocino, supra*, [13 Cal.4th at p. 53.](#))

(5) The legislative branch of government, although it is charged with the formulation of policy, properly may delegate some quasi-legislative or rulemaking authority to administrative agencies. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 142 [93 Cal.Rptr. 234, 481 P.2d 242].) For the most part, delegation of quasi-legislative authority to an administrative agency is not considered an unconstitutional abdication of legislative power. (*Davis v. Municipal Court, supra*, 46 Cal.3d at p. 76; *Bixby v. Pierno, supra*, 4 Cal.3d at p. 142.) "The true distinction ... is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (*Loving v. United States, supra*, 517 U.S. at pp. 758-759 [116 S.Ct. at p. 1744]; see also 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 130, p. 186.)

(6) The Department of Industrial Relations, however, as an executive agency created by statute, has only as much rulemaking power as is invested in it by statute. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-392 [211 Cal.Rptr. 758, *300 696 P.2d 150]; *State Bd. of Education v. Honig, supra*, 13 Cal.App.4th at pp. 750-752 ["there is no agency discretion to promulgate a regulation which is inconsistent with the governing statute" (italics omitted)]; *Imperial Irrigation Dist. v. State Water Resources Control Bd.* (1990) 225 Cal.App.3d 548, 567 [275 Cal.Rptr. 250] ["[t]he powers of public [agencies] are derived from the statutes which create them and define their functions'"].) As we have explained, "[a]dministrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void." (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 391.) And, as another court has announced, "the rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency [R]egulations that alter or amend the statute or enlarge or impair its scope are void." (*Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982 [8 Cal.Rptr.2d 565].) An executive agency lacks power, for example, to order the disbursement of funds for a purpose contrary to that stated in a legislative enactment. (*Assembly v. Public Utilities*

[Com. \(1995\) 12 Cal.4th 87, 100-104 \[48 Cal.Rptr.2d 54, 906 P.2d 1209\].](#))

(7) Further, an administrative agency is subject to the legislative power of the purse and "may spend no more money to provide services than the Legislature has appropriated." (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 393.) The power of appropriation includes the power to withhold appropriations. Neither an executive administrative agency nor a court has the power to require the Legislature to appropriate money. (*California State Employees' Assn. v. Flourney* (1973) 32 Cal.App.3d 219, 234-235 [108 Cal.Rptr. 251].) For example, in *California State Employees' Assn. v. Flourney*, the Court of Appeal rejected a separation of powers claim that, because the Regents of the University of California was the executive agency vested with the power to govern the university, the Legislature lacked authority to refuse to grant the salary increases recommended by the Regents. The court observed that although the Regents possessed broad discretion over governance of the university, a constitutional power that was beyond the control of the Legislature, the "finances of the University are subject to legislative scrutiny' Hence, although ... the Regents may be granted salary-fixing authority by the state Constitution, there is nothing to suggest that they additionally are granted authority to compel the California Legislature to appropriate money to pay any faculty salary increases which the Regents may have authorized or 'fixed.'" (*Id.* at p. 233.)

(1b) The decision to relieve districts of the duty to comply with specified executive orders is a policy decision—an act within the authority of the *301 Legislature, although it incidentally affects the legislatively enacted authority of the Department of Industrial Relations to promulgate regulations. (See *Steiner v. Superior Court* (1996) 50 Cal.App.4th 1771, 1785 [58 Cal.Rptr.2d 668] ["revocation of legislative action is itself legislative"].) The circumstance that the department may have had concurrent authority to alter or rescind the regulations in the present case—within the bounds of its statutory authority—does not suggest that the Legislature lacked authority over the matter. (See *In re Attorney Discipline System, supra*, 19 Cal.4th at pp. 596, 602-603, 611 [the circumstance that the Legislature has authority to impose attorney discipline and fees does not mean that the court cannot]; *Mendocino, supra*, 13 Cal.4th at p. 58 [the Legislature may exert "the authority to establish a schedule providing when the court generally will be open to the public," although a

court has " 'inherent power' to control the hours and days of its operations"].)

(8a) Considering the appropriate function of the Legislature-to define policy and allocate funds-and considering the inability of an administrative agency to which quasi-legislative power has been delegated to adopt rules inconsistent with the agency's governing statutes, we believe that a legislative enactment that limits the mandate of an administrative agency or withdraws certain of its powers is not necessarily suspect under the doctrine of separation of powers. When the Legislature has not taken over core functions of the executive branch and the Legislature has exercised its authority in accordance with formal procedures set forth in the Constitution, such an enactment normally is consistent with the checks and balances prescribed by our Constitution. [FN4]

FN4 We need not determine whether *Nixon v. Administrator of General Services* (1977) 433 U.S. 425 [97 S.Ct. 2777, 53 L.Ed.2d 867], cited by the districts, applies to a claim under the state Constitution. *Nixon* directs that under the federal separation of powers doctrine a court first must determine whether legislative action is "unduly disruptive" (*id.* at p. 445 [97 S.Ct. at p. 2791]) and examine the "extent to which [the action] prevents the Executive Branch from accomplishing its constitutionally assigned functions. [Citation.] Only where the potential for disruption is present must [the court] then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." (*Id.* at p. 443 [97 S.Ct. at p. 2790].) We have not adopted such a standard in the past (see *Butt v. State of California, supra*, 4 Cal.4th at p. 702), and in any case, as discussed below, we do not perceive a potential for undue disruption of the Department of Industrial Relations' essential functions, so we need not consider whether, had such disruption been found, we would overlook it in the interest of some "overriding need" for the legislative action. We note, too, that later high court cases do not apply this balancing test, but treat the separation of powers doctrine as a structural requirement that applies whether or not the encroachment appears to carry out an important policy. (*Chadha, supra*, 462 U.S.

at pp. 944-946 [103 S.Ct. at pp. 2780-2782]; see also *Bowsher v. Synar, supra*, 478 U.S. at p. 736 [106 S.Ct. at pp. 3192-3193].)

(1c) Government Code section 17581 was enacted, of course, by both houses of the Legislature and presented to the Governor for approval, as *302 were the budget items at issue in the present case. The adoption of the statutory provision and the budgetary limitations in the present case-measures that suspend operation of executive orders and withhold state reimbursement for certain protective gear no longer mandated by the orders-does not signify that the Legislature has taken over core functions of the executive branch. Although section 17581 and the noted budget items have some impact on the functions of the Department of Industrial Relations, they do not defeat or materially impair the ability of the department to carry out its mandate to protect worker safety: even in the realm of the protection of firefighters, the department retains authority to enforce other, generally applicable regulations and to issue orders intended to ensure firefighter safety. Rather, the effect on the department is incidental, while the statutory and budget measures under review constitute an expression of the Legislature's essential duty to devise a reasonable budget.

It is most significant to the present case that the Legislature is the branch of government that must, on a yearly basis, fit the needs of the state into the funds available. "Enactment of a state budget is a legislative function, involving 'interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.' " (*Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240, 1249 [80 Cal.Rptr.2d 891].) In determining what funds to expend in a given year, the Legislature must consider many legitimate and pressing calls on the state's resources-in addition to the safety of firefighters. (See *California Teachers Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860 [53 Cal.Rptr.2d 917].)

This is not a case in which the legislative action deprives the administrative agency of the resources necessary to carry out its function. The present case is distinguishable, therefore, from *Scott v. Common Council* (1996) 44 Cal.App.4th 684 [52 Cal.Rptr.2d 161], a case cited by the districts. In that case, the

Court of Appeal determined that a local legislative body's action in eliminating all funding for the city attorney's investigative staff was beyond the normal appropriation power of that body, because "the budget cuts materially impaired the city attorney in the performance of his prosecutorial duties." (*Id.* at p. 694.) Such is not the case here.

We are unaware of any authority, and the Court of Appeal did not cite any, establishing that the Legislature may not circumscribe the authority of an administrative agency in certain particulars without withdrawing the general delegation of rulemaking authority it has made to the administrative *303 agency. Such a rule would be cumbersome in the extreme, requiring a major overhaul of administrative function when a minor change might suffice, and impairing the ability of the Legislature to allocate funds on a yearly basis.

Despite the contrary assertion of the Court of Appeal and the districts, the decision in *California Radioactive Materials, supra*, 15 Cal.App.4th 841, does not compel a contrary conclusion. In that case, a committee of the state Senate exacted a promise from persons being considered for confirmation as officers of the Department of Health Services that an application to construct a low-level radioactive waste disposal site would be reconsidered at a hearing conducted pursuant to a formal procedure prescribed by the Administrative Procedure Act (APA), although such a procedure was not required by statute. The Court of Appeal issued a writ of mandate directing the department to set aside its order for further formal administrative hearings, because the legislative action requiring such a hearing had not been undertaken by vote of both houses of the Legislature and presented to the Governor.

In reaching this decision, the Court of Appeal relied in part upon the decision of the United States Supreme Court in *Chadha, supra*, 462 U.S. 919. In that case, pursuant to a statute granting it this power, the United States House of Representatives passed a resolution overturning an administrative decision suspending deportation of a noncitizen. The high court determined that the statute permitting such legislative interference with administrative action constituted a violation of the doctrine of separation of powers, because the statute purported to authorize a legislative act that was not the result of an enactment passed by both houses of Congress and presented to the President for approval or veto. (*Id.* at pp. 944-959 [103 S.Ct. at pp. 2780-2788].) Language in the *Chadha* opinion stressing the independence of the

executive branch from legislative interference must be understood in context; the flaw in the legislative act was that Congress failed to enact the measure (overturning the administrative decision) by act of both houses and to present the duly passed enactment to the chief executive for approval or veto.

Relying on *Chadha, supra*, 462 U.S. 919, the Court of Appeal in *California Radioactive Materials* appropriately concluded that "having granted authority to the department to execute the provisions of the Radiation Control Law, the Legislature 'must abide by its delegations of authority until that delegation is legislatively altered or revoked' by statute in accordance with the bicameral and presentment requirements of our Constitution." (*California Radioactive Materials, supra*, 15 Cal.App.4th at p. 872.) Applied to the *304 present case, this conclusion means only that Government Code section 17581 would be unconstitutional if it permitted a single house of the Legislature to suspend a departmental mandate without concurrence of both houses and presentment to the Governor.

The decision in *California Radioactive Materials* went beyond *Chadha* in asserting that, "[h]aving enacted a statutory scheme, the Legislature has no power to exercise supervisory control or to retain for itself some sort of 'veto' power over the manner of execution of the laws." (*California Radioactive Materials, supra*, 15 Cal.App.4th at p. 872.) In this respect, the decision overstated the matter—certainly the legislative branch retains control to the extent that both of its houses may pass an enactment, with the approval of the President or the Governor, that does not constitute a material incursion upon the power of the executive. (See *MWAA v. CAAN, supra*, 501 U.S. at pp. 274-276 [111 S.Ct. at pp. 2310-2312].)

In support of the above quoted dictum, the Court of Appeal in *California Radioactive Materials* mistakenly relied upon our decision in *State Board of Education v. Levit* (1959) 52 Cal.2d 441, 461-462 [343 P.2d 8] and the decision of the high court in *Bowsher v. Synar, supra*, 478 U.S. 714, 726-727 [106 S.Ct. 3181, 3187-3188]. In *Levit*, we explained that the California Constitution specifically conferred authority to select school textbooks upon the State Board of Education, and that an established principle directed that when the state Constitution specifically confers power upon an executive officer, the Legislature cannot directly or indirectly remove that power from that officer's control. Under these rules, we readily concluded that the Legislature stepped beyond the constitutional limits of its power when it

inserted a restriction into a general budget item appropriating funds for textbooks, prohibiting expenditure for a particular textbook selection made by the State Board of Education. In this instance the executive, by operation of an express *constitutional* provision, had *exclusive* control over textbook selection. (*Levit, supra, 52 Cal.2d at pp. 460-464.*) The state Constitution, by contrast, does not vest the Department of Industrial Relations with exclusive control over all measures to be employed to ensure worker safety.

The *Bowsher* case involved the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. § 901 et seq.), which, when federal deficit spending exceeded a certain limit, required the United States Comptroller General to identify budget reductions that the President was required to carry out. The act vested Congress with the power to remove the Comptroller General from office by joint resolution (or by impeachment). The high court *305 determined that the doctrine of separation of powers established that Congress may not remove an officer charged with executive duties except by impeachment. Although the Comptroller General served an executive function, under the act Congress retained the power to remove the official from office. The officer thereby became answerable only to Congress, vesting Congress with control of the execution of the laws, in violation of the doctrine of separation of powers. (*Bowsher v. Synar, supra, 478 U.S. at pp. 722-723 [106 S.Ct. at pp. 3185-3186].*) The high court's opinion announced that " 'Congress must abide by its delegation of authority [to an executive officer] until that delegation is legislatively altered or revoked.' " (*Id. at p. 726 [106 S.Ct. at p. 3188].*)

We do not believe that the *Bowsher* decision would prevent Congress from amending the deficit control act to exempt from the Comptroller General's budget reduction authority certain projects favored by Congress. Rather, the decision barred ultimate congressional *control*-through the unilateral power of removal-over *any* executive exercise of the discretion actually vested in that official by the statute. The case stands for the proposition that Congress may limit the discretion vested in the executive by enacting a statute circumscribing that discretion, but it may not control the *exercise* of the discretion actually vested by statute in the executive by retaining the unilateral power of removal. (8b) Similarly, if we were to apply the *Bowsher* decision in the present context, it might cast doubt on the California Legislature's authority to enact a statute vesting the legislative branch with the

unilateral power to remove the Director of the Department of Industrial Relations from office by joint resolution, but it would not cast doubt on the power of the Legislature to enact a statute limiting the scope of the discretion vested in the director-as long as the limitation did not defeat or materially impair the exercise of executive power. [FN5]

FN5 *California Radioactive Materials Management Forum v. Department of Health Services, supra, 15 Cal.App.4th 841*, is disapproved to the extent it is inconsistent with this opinion.

(1d) The districts claim that in cases similar to this one, the United States Supreme Court has rejected legislative incursions into the power vested in administrative agencies as inconsistent with the doctrine of separation of powers, and they urge this court to follow suit. We do not believe, however, that the cited decisions would direct that we disapprove Government Code section 17581-putting aside the question whether, in interpreting our own state Constitution's separation of powers clause, we are bound to adopt the reasoning of the high court. It is true that the high court rejected certain legislative veto provisions in *Chadha, supra, 462 U.S. 919*, and other cases because they unconstitutionally interfered with the authority of the *306 executive branch. As noted, however, *Chadha* was concerned primarily with the formal requirements of bicameral enactment and presentment to the chief executive, and these requirements have been met in the present case. As explained, the present case is not like *Bowsher v. Synar, supra, 478 U.S. 714*, nor is it comparable to *MWAA v. CAAN, supra, 501 U.S. 252*, in which Congress created an administrative agency over which it maintained absolute control because members of Congress constituted a majority of the agency's executive board. In that case the legislative branch retained *absolute* control over an executive function, while in the present case the Department of Industrial Relations retains administrative control subject to *incidental* legislative restriction that is wholly consistent with the exercise of the legislative power over appropriations.

Contrary to the claim of the districts, the United States Supreme Court has acknowledged that Congress generally may control executive administrative action by *enacting an appropriate statute* circumscribing the authority of the agency. (*Chadha, supra, 462 U.S. at pp. 954-955 & fn. 19*)

[103 S.Ct. at pp. 2785-2786]; *Bowsher v. Synar*, *supra*, 478 U.S. at pp. 733-734 [106 S.Ct. at pp. 3191-3192].) Courts in other jurisdictions also acknowledge that the Legislature retains this power. (See *Mo. Coalition v. Joint Com. on Admin.* (Mo. 1997) 948 S.W.2d 125, 134 ["It [the legislature] may ... attempt to control the executive branch by passing amendatory or supplemental legislation and presenting such legislation to the governor for signature or veto, or, by the power of appropriation"]; *Matter of State Health Plan* (1994) 135 N.J. 24 [637 A.2d 1246, 1248] ["Thus, if the Legislature concludes that an administrative regulation exceeds the agency's delegated authority or is contrary to public policy, it may adopt legislation that overrides the regulation"].) The Ninth Circuit United States Court of Appeals, for example, rejected a separation of powers claim against a federal enactment exempting a certain development project from ongoing administrative scrutiny under the Environmental Protection Act and the National Historic Preservation Act. Declining to rely upon *Chadha*, *supra*, 462 U.S. 919, and citing *Bowsher v. Synar*, *supra*, 478 U.S. 714, in support, the circuit court stated that "Congress 'essentially assumed the role the [agency] would ordinarily have played and made a selection' " among various possible administrative determinations. (*Apache Survival Coalition v. U.S.* (9th Cir. 1994) 21 F.3d 895, 900.) Far from "arrogat[ing] the powers reserved to the Executive Branch," the court stated, the enactment did "not usurp the [agency's] authority to decide if the [administrative] requirements ... have been met; rather, it exempts the Project from those requirements ¶] ... There has been no usurpation of the Executive's power; instead, Congress has changed the scope of the Executive's duties." (*Id.*, at pp. 904-905.) *307

Even cases holding that certain legislative veto provisions violate the doctrine of separation of powers nonetheless have recognized that the legislature properly retained certain power to control executive action. For example, in a case summarily affirmed by the United States Supreme Court, the United States Court of Appeals, District of Columbia Circuit, declared that although the Natural Gas Policy Act of 1978 contained an unconstitutional provision for a one-house veto of energy pricing regulations, nonetheless, "[p]resumably, a legislative review mechanism permitting a rule to be repealed by a joint resolution presented to the President would present no constitutional problems. Even though such a device would still differ from enactment of a statute—since the statutory language would remain the same

although the specific action was forbidden, and since a veto resolution is easier to adopt than an affirmative bill—the essential elements of the constitutional lawmaking process would participate. There would be neither an increase in total federal power nor a violation of separation of powers." (*Consumer Energy, etc. v. F. E. R. C.* (D.C. Cir. 1982) 673 F.2d 425, 470, summarily *affd. sub nom. Process Gas Consumers Group v. Consumer Energy Council of America* (1983) 463 U.S. 1216 [103 S.Ct. 3556, 77 L.Ed.2d 1402, 1403, 1413].)

We do not find any language in these cases indicating that the legislative branch may not alter the discretion afforded the executive except by withdrawing *entirely* its original delegation of power to the administrative agency. We observe that in an article written shortly after the *Chadha* decision, Justice Stephen Breyer, then a judge on the United States Court of Appeals, First Circuit, suggested that although the *Chadha* decision made questionable the many legislative veto provisions then common in federal enactments, Congress legitimately could achieve the same result by *enacting a statute setting aside the agency action or by cutting the agency's appropriation*. He stated that Congress "can delay implementation of an executive action ... until Congress has had time to consider it and to enact legislation preventing the action from taking effect If a significant group of legislators strongly opposes a particular agency decision, it might well succeed in including a sentence in the appropriations bill denying the agency funds to enforce that decision." (Breyer, *The Legislative Veto after Chadha* (1984) 72 Geo. L.J. 785, 792.)

Cases analyzing the problem of the legislative veto also acknowledge, as did Justice Breyer, that the legislative branch legitimately may employ its power of the purse to control executive action. (See *Consumer Energy etc. v. F.E.R.C.*, *supra*, 673 F.2d at p. 474; *Mo. Coalition v. Joint Com. on Admin.*, *supra*, 948 S.W.2d 125, 134 [the legislature "may ... attempt to control the *308 executive branch by passing amendatory or supplemental legislation and presenting such legislation to the governor for signature or veto, or, *by the power of appropriation*" (italics added)]; *Enourato v. N. J. Building Auth.* (1982) 90 N.J. 396 [448 A.2d 449, 453] ["The Legislature has the power to fund or not to fund executive agencies and the projects undertaken by those agencies"].)

The enactment challenged in the present case is consistent with the doctrine of separation of powers,

in that it was enacted by both houses of the Legislature and presented to the Governor for signature-as were the budget items in question-and the enactment expressed a legislative determination to suspend a regulation and thereby curtail the authority of the executive, in pursuit of the legitimate legislative goal of allocating scarce resources in an appropriate manner. In addition, the operation of Government Code section 17851 and the budget acts in question had only a narrow impact upon the Department of Industrial Relations' regulatory scheme and ability to enforce health and safety regulations. The districts produced no evidence of any negative consequences flowing from the Legislature's action. Indeed, it appears that the districts have purchased the protective gear at their own expense, but have not exercised their statutory authority to impose local fees to recoup this cost. ([Gov. Code, § 17581](#), subd. (b).)

The districts complain that the practical result of a decision upholding the constitutionality of [Government Code section 17581](#) would be to subject them to civil and criminal liability for failing to provide the protective equipment described in the regulations, even though pursuant to [section 17581](#), the districts could not be reimbursed for the state-mandated expenditure necessary to acquire the equipment. They point out that they remain obligated to provide a safe workplace (see [Lab. Code, § § 6400-6407](#)), and specifically to provide reasonably adequate safety devices ([Lab. Code, § 6403](#)). They assert that this duty may be enforced by departmental order, and thereafter through citations and penalties (see [Lab. Code, § § 6305, 6308, 6317](#)) as well as injunction ([Lab. Code, § 6323](#)). They also assert that breach of this duty could subject them to liability in tort and to criminal liability. They assert that the Department of Industrial Relations could order them to provide adequate safety equipment, and yet, despite the circumstance that requirements for firefighter safety equipment have been held to be peculiarly a governmental expense and therefore subject to reimbursement as a state-mandated local program (see *Carmel I, supra*, [190 Cal.App.3d at p. 537](#)), they would have to purchase the equipment from local funds without state reimbursement.

The State answers that the districts appropriately remain subject to general rules imposing a duty upon all employers to provide a safe workplace, and in *309 this way they are no more subject to civil and criminal liability than any other employer. It seems clear that by operation of [Government Code section 17581](#) and the budget items we have noted, the

districts are not subject to a duty to comply with the regulations at issue in the present case, so that no violation of *those regulations* could be posited as the basis for civil or criminal liability. In any event, it does not appear to us that the districts' complaints in this regard relate to their claim that under the separation of powers doctrine, the Legislature lacks *authority* to suspend operation of an administrative regulation. Rather, these complaints would be pertinent only to a distinct contention that is not before us: that despite the valid operation of [section 17581](#), the Legislature did not *effectively* extinguish a state mandate to provide the particular protective equipment because that mandate flows from some source *other than the regulations identified in the budget items that are at issue in this case*.

We need not resolve the doubtful claim, however, that pursuant to some statute or regulation not identified in the budget act and therefore not suspended by [section 17581](#), districts might remain obligated by state law to provide the safety equipment at issue in this case and that therefore they are entitled to reimbursement for state-mandated local expenditures for such safety equipment. The districts seem especially concerned that expenditures may be required of them in the future by order of the Department of Industrial Relations under other still applicable administrative orders or provisions of the Labor Code. This speculative claim is not involved in our determination that [Government Code section 17581](#) and the related budget items do not so intrude upon the power of the executive branch as to violate our state Constitution's separation of powers clause. [FN6]

FN6 Because of our resolution of the districts' separation of powers claim, we need not consider the districts' further claim that, in the event they are entitled to relief, the appropriate remedy would be a writ of mandate directing the Controller to pay the districts' claims from funds appropriated for operation of the Department of Finance and the Department of Industrial Relations, instead of a remand of the matter to the Commission for the processing of the districts' claims.

IV

The judgment of the Court of Appeal is reversed, and the matter is remanded for further proceedings

consistent with this opinion.

Mosk, J., Kennard, J., Baxter, J., Werdegar, J., Chin, J., and Brown, J., concurred.

Appellants' petition for a rehearing was denied May 23, 2001. *310

Cal. 2001.

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents.

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Supreme Court of California

DEPARTMENT OF FINANCE, Plaintiff and
Appellant,
v.
COMMISSION ON STATE MANDATES,
Defendant and Respondent; KERN HIGH SCHOOL
DISTRICT et al., Real Parties in Interest and
Respondents.

No. S109219.

May 22, 2003.

SUMMARY

The Department of Finance brought an administrative mandate proceeding against the Commission on State Mandates, challenging its decision that two statutes- requiring school site councils and advisory committees for certain educational programs to provide notice of meetings and to post agendas for those meetings- constituted a reimbursable state mandate under [Cal. Const., art. XIII B, § 6](#). The trial court denied the petition. (Superior Court of Sacramento County, No. 00CS00866, Ronald B. Robie, Judge.) The Court of Appeal, Third Dist., No. C037645, rejected the department's position, concluding that a state mandate is established when the local governmental entity has no reasonable alternative and no true choice but to participate in the program, and incurs the additional costs associated with an increased or higher level of service.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the statutes do not constitute a reimbursable state mandate. Thus, the claimants (two public school districts and a county) were not entitled to reimbursement. The claimants could not show that they were legally compelled to incur notice and agenda costs, and hence entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions were mandatory elements of education-related programs in which the claimants participated, without regard to whether the claimants' participation was

voluntary or compelled. If a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. In this case, the claimants were not legally compelled to participate in eight of the nine underlying funded programs. Even if the claimants were legally compelled to participate in one of the nine programs, they were nevertheless not entitled to reimbursement from the state for such expenses, because they *728 were free at all relevant times to use funds provided by the state for that program to pay required program expenses, including notice and agenda costs. The court further held that the claimants failed to show that they were compelled to participate in the underlying programs. Moreover, the costs associated with the notice and agenda requirements were modest, and nothing in the governing statutes or regulations suggested that a school district was precluded from using a portion of the program funds obtained from the state to pay associated notice and agenda costs. (Opinion by George, C. J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Reimbursable State Mandate-- School Programs--Statutory Requirements to Provide Notice and to Post Agenda of Meetings--Participation in Programs as Legally Compelled.

In proceedings to determine whether statutes, requiring school site councils and advisory committees for certain educational programs to provide notice of meetings and to post agendas for those meetings, were reimbursable mandates under [Cal. Const., art. XIII B, § 6](#), the Court of Appeal erred in concluding that the claimants (two public school districts and a county) were entitled to reimbursement. The claimants could not show that they were legally compelled to incur notice and agenda costs, and hence entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions were mandatory

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elements of education-related programs in which the claimants participated, without regard to whether the claimants' participation was voluntary or compelled. If a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. The proper focus under a legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves. In this case, the claimants were not legally compelled to participate in eight of the nine underlying funded programs. Even if the claimants were legally compelled to participate in one of the nine programs, they were nevertheless not entitled to reimbursement from the state for such expenses, because they were free at all relevant times to use funds provided by the state for that program to pay required program expenses, including notice and agenda costs.

[See [9 Witkin, Summary of Cal. Law \(9th ed. 1989\) Taxation, § 123A](#); West's Key Number Digest, States  111.] *729

(2a, 2b, 2c) State of California § 11--Fiscal Matters--Reimbursable State Mandate--School Programs--Statutory Requirements to Provide Notice and to Post Agenda of Meetings--Participation in Programs as Compelled--As Practical Matter.

In proceedings to determine whether statutes, requiring school site councils and advisory committees for certain educational programs to provide notice of meetings and to post agendas for those meetings, were reimbursable mandates under [Cal. Const., art. XIII B, § 6](#), in which claimants (two public school districts and a county) failed to show that they were legally compelled to participate in the underlying funded programs and incur notice and agenda costs, the claimants also failed to show that, as a practical matter, they were compelled to participate in the underlying programs. Although the claimants sought to show that they had no true choice other than to participate in the programs, and that the absence of a reasonable alternative to participation was a de facto mandate, they did not face penalties such as double taxation or other severe consequences for not participating, and hence they were not mandated under [Cal. Const., art. XIII, § 6](#), to incur increased costs. Moreover, the costs associated with the notice and agenda requirements were modest, and nothing in the governing statutes or regulations suggested that a school district was precluded from using a portion of the program funds obtained from

the state to pay associated notice and agenda costs. The asserted compulsion stemmed only from the circumstance that the claimants found the benefits of various funded programs too beneficial to refuse. However, the state is not prohibited from providing school districts with funds for voluntary programs, and then effectively reducing that grant by requiring the districts to incur expenses in order to meet conditions of program participation.

(3) Municipalities § 23--Powers--Relationship Between State and Local Governments.

Unlike the federal-state relationship, sovereignty is not an issue between state and local governments.

(4) State of California § 11--Fiscal Matters--Reimbursable State Mandate-- Purpose.

The purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursable state mandates), 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.

COUNSEL

Bill Lockyer, Attorney General, Andrea Lynn Hoch, Chief Assistant Attorney General, Manuel M. Medeiros and Louis R. Mauro, Assistant Attorneys *730 General, Catherine M. Van Aken and Leslie R. Lopez, Deputy Attorneys General, for Plaintiff and Appellant.

Paul M. Starkey, Camille Shelton and Eric D. Feller for Defendant and Respondent.

Jo Anne Sawyerknoll, Jose A. Gonzales and Arthur M. Palkowitz for Real Party in Interest and Respondent San Diego Unified School District.

No appearance by Real Parties in Interest and Respondents Kern High School District and County of Santa Clara.

Ruth Sorensen for California State Association of Counties, City of Buenaventura, City of Carlsbad, City of Dixon, City of Indian Wells, City of La Habra Heights, City of Merced, City of Monterey, City of Plymouth, City and County of San Francisco, City of San Luis Obispo, City of San Pablo, City of Tracy and City of Walnut Creek as Amici Curiae on behalf of Real Parties in Interest and Respondents.

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Diana McDonough, Harold M. Freiman, Cynthia A. Schwerin and Lozano Smith for California School Boards Association, through its Education Legal Alliance as Amici Curiae on behalf of Real Parties in Interest and Respondents.

GEORGE, C. J.

[Article XIII B, section 6, of the California Constitution](#) provides: "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 program or increased level of service" (Hereafter [article XIII B, section 6.](#))

Real parties in interest—two public school districts and a county (hereafter claimants)—participate in various education-related programs that are funded by the state and, in some instances, by the federal government. Each of these underlying funded programs in turn requires participating public school districts to establish and utilize specified school councils and advisory committees. Statutory provisions enacted in the mid-1990's require that such school councils and advisory committees provide notice of meetings, and post agendas for those meetings. (See [Gov. Code, § 54952](#); [*731 Ed. Code, § 35147.](#)) We granted review to determine whether claimants have a right to reimbursement from the state for their costs in complying with these statutory notice and agenda requirements.

We conclude, contrary to the Court of Appeal, that claimants are not entitled to reimbursement under the circumstances presented here. Our conclusion is based on the following determinations:

First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion.

Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses— including the notice and agenda costs here at issue.

Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program—claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs "too good to refuse"—even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.

Accordingly, we shall reverse the judgment of the Court of Appeal. ***732**

I.

A number of statutes establish various school-related educational programs, such as the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act ([Ed. Code, § 54720](#) et seq.), Programs to Encourage Parental Involvement ([Ed. Code, § 11500](#) et seq.), and the federal Indian Education Program (20 U.S.C. § 7421 et seq. [former 25 U.S.C. § 2604 et seq.]). Under these statutes, participating school districts are granted state or federal funds to operate the program, and are required to establish school site councils or advisory committees that help administer the program. Program funding often is substantial—for example, on a statewide basis, funding provided by the state for

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school improvement programs (see [Ed. Code, § § 52010](#) et seq., [62000](#), [62000.2](#), subd. (b), 62002) for the 1998-1999 fiscal year totaled approximately \$394 million. (Cal. Dept. of Ed., Rep., Budget Act of 1998 (Nov. 1998) p. 52.)

In the mid-1990's, the Legislature passed legislation designed to make the operations of the councils and advisory committees related to such programs more open and accessible to the public. First, effective April 1, 1994, the Legislature enacted [Government Code section 54952](#), which expanded the reach of the Ralph M. Brown Act (Brown Act) ([Gov. Code, § 54950.5](#) et seq.)- California's general open meeting law-to apply to all such official local advisory bodies. [FN1] Second, effective July 21, 1994, [Education Code section 35147](#) superceded [Government Code section 54952](#), with respect to the application of the Brown Act to designated councils and advisory committees. Although the earlier (Government Code) statute had made *all* local government councils and advisory committees subject to *all* provisions of the Brown Act, the later (Education Code) statute generally exempts councils and advisory committees of nine specific programs from compliance with all provisions of the Brown Act, and imposes instead its own separately described requirement that all such councils and advisory committees related to those nine programs be open to the public, provide notice of meetings, and post meeting agendas. [FN2] *733

FN1 [Government Code section 54952](#), a provision of the Brown Act, provides in relevant part: "As used in this chapter, 'legislative body' means: [¶] (a) The governing body of a local agency or any other local body created by state or federal statute. [¶] (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body...."

FN2 [Education Code section 35147](#) provides in relevant part: "(a) Except as specified in this section, any meeting of the councils or committees specified in subdivision (b) is exempt from ... the Ralph M. Brown Act... [¶] (b) The councils and schoolsite advisory committees established pursuant to Sections 52012, 52065, 52176, and 52852,

subdivision (b) of Section 54425, Sections 54444.2, 54724, and 62002.5, and committees formed pursuant to Section 11503 or [Section 2604 of Title 25 of the United States Code](#), are subject to this section. [¶] (c) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda...."

The nine school site councils and advisory committees specified in subdivision (b), above, were established as part of the following programs: The school improvement program ([Ed. Code, § 52010](#) et seq.; see *id.*, [§ § 62000](#), [62000.2](#), subd. (b), 62002) [a general program that disburses funds for all aspects of school operation and performance]; the American Indian Early Childhood Education Program ([Ed. Code, § 52060](#) et seq.); the Chacon-Moscone Bilingual-Bicultural Education Act of 1976 ([Ed. Code, § 52160](#) et seq.; see *id.*, 62000, 62000.2, subd. (d)); the School-Based Program Coordination Act ([Ed. Code, § 52850](#) et seq. [a program designed to coordinate various categorical aid programs]); the McAteer Act ([Ed. Code, § 54400](#) et seq. [various compensatory education programs for "disadvantaged minors"]); the Migrant Children Education Programs ([Ed. Code, § 54440](#) et seq.); the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act ([Ed. Code, § 54720](#) et seq. [a

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program designed to address truancy and dropout issues]); the Programs to Encourage Parental Involvement ([Ed. Code, § 11500](#) et seq.); and the federal Indian Education Program (20 U.S.C. § 7421 et seq. [former 25 U.S.C. § 2601 et seq.].)

Compliance with these notice and agenda rules in turn imposed various costs on the affected councils and committees. Claimants Kern High School District, San Diego Unified School District, and County of Santa Clara filed "test claims" (see [Gov. Code, § 17521](#)) with the Commission on State Mandates (Commission), seeking reimbursement for the costs incurred by school councils and advisory committees in complying with the new statutory notice and agenda requirements. (See generally [Kinlaw v. State of California \(1991\) 54 Cal.3d 326, 331-333 \[285 Cal.Rptr. 66, 814 P.2d 1308\]](#) [describing legislative procedures implementing [art. XIII B, § 6](#)].) [FN3] In a statement of decision issued in mid-April 2002, the Commission found in favor of claimants. It concluded that the statutory notice and agenda requirements impose reimbursable state mandates for the costs of preparing meeting agendas, posting agendas, and providing the public an opportunity to address the respective council or committee. *734

FN3 In December 1994, Santa Clara County filed the first test claim, asserting that [Government Code section 54952](#) imposed a reimbursable state mandate. In December 1995, Kern High School District filed a test claim asserting that [Education Code section 35147](#) imposes a reimbursable state mandate. These two claims were consolidated, and San Diego Unified School District was added as a coclaimant.

Acting through the Department of Finance, the State of California (hereafter Department of Finance or Department) thereafter brought this administrative mandate proceeding under [Government Code section 17559](#), subdivision (b), to challenge the Commission's decision. The San Diego Unified School District took the lead role on behalf of claimants; the Kern High School District and the County of Santa Clara did not appear in the court proceedings below and have not appeared in this court.

In November 2000, the trial court, agreeing with the Commission, denied the mandate petition. [FN4] The Department of Finance appealed, arguing that the school councils and advisory committees at issue serve categorical aid programs in which school districts participate "voluntarily," often as a condition of receiving state or federal program funds. The Department of Finance asserted that the state has not *compelled* school districts to participate in or accept funding for any of those underlying programs-and hence has not required the establishment of any of the councils and committees that serve the programs. Instead, the Department of Finance argued, the state merely has set out reasonable conditions and rules that must be adhered to if a local entity elects to participate in a program and receive program funding. Accordingly, the Department of Finance asserted, because local entities are not required to undertake or continue to participate in the programs, the state, by enacting [Government Code section 54952](#) and [Education Code section 35147](#), has not imposed a "mandate," as that term is used in [article XIII B, section 6](#). It follows, the Department of Finance asserted, that claimants have no right to reimbursement under [article XIII B, section 6](#).

FN4 The trial court stated: "Two primary issues are raised in this matter. The first issue is whether the 1993 amendments to the Brown Act [that is, enactment of [Government Code section 54952](#)] and the 1994 enactment of ... [[Education Code section 35147](#)] mandate a new program or higher level of service. The Court concludes that they do. The second issue is whether a reimbursable state mandate is created only when an advisory council or committee which is subject to the Brown Act is required by state law. The Court concludes that it is not."

In a July 2002 decision, the Court of Appeal rejected the position taken by the Department of Finance. The appellate court concluded that a state mandate is established under [article XIII B, section 6](#), when the local governmental entity has "no reasonable alternative" and "no true choice but to participate" in the program, and incurs the additional costs associated with an increased or higher level of service. [FN5]

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FN5 The Court of Appeal also concluded that [Government Code section 54952](#) and [Education Code section 35147](#) establish a "higher level of service" under [article XIII B, section 6](#). We need not and do not review that determination here, and express no view on the validity of that conclusion.

We granted review to consider the Court of Appeal's construction of the term "state mandate" as it appears in [article XIII B, section 6](#). *735

II.

Article XIII A (adopted by the voters in 1978 as Proposition 13), limits the *taxing* authority of state and local government. [Article XIII B](#) (adopted by the voters in 1979 as Proposition 4) limits the *spending* authority of state and local government.

[Article XIII B, section 6](#), provides as follows: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." [Article XIII B](#) became operative on July 1, 1980. (*Id.*, § 10.)

We have observed that [article XIII B, section 6](#), "recognizes that [articles XIII A](#) and [XIII B](#) severely restrict the taxing and spending powers of local governments. [Citation.] Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that [articles XIII A](#) and [XIII B](#) impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 [61 Cal.Rptr.2d 134, 931 P.2d 312] (*County of San Diego*)). We also have observed that a reimbursable state mandate does not arise merely because a local entity finds itself bearing an "additional cost" imposed by state law. (*County of*

Los Angeles v. State of California (1987) 43 Cal.3d 46, 55-57 [233 Cal.Rptr. 38, 729 P.2d 202].) The additional expense incurred by a local agency or school district arising as an "incidental impact of a law which applied generally to all ... entities" is not the "type of expense ... [that] the voters had in mind when they adopted [section 6 of article XIII B](#)," (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 [244 Cal.Rptr. 677, 750 P.2d 318]; see also *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235]; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*)). [FN6]

FN6 As we observed in *City of Sacramento, supra*, 50 Cal.3d at page 70, "extension of the subvention requirements to costs 'incidentally' imposed on local governments would require the Legislature to assess the fiscal effect on local agencies of each law of general application. Moreover, it would subject much general legislation to the supermajority vote required to pass a companion local-government revenue bill. Each such necessary appropriation would, in turn, cut into the state's [article XIII B](#) spending limit. ([[Art. XIII B](#),] § 8, subd. (a).)" We reaffirmed that "nothing in the language, history, or apparent purpose of [article XIII B](#) suggested such far-reaching limitations on legitimate state power." (50 Cal.3d at p. 70.)

The focus in many of the prior cases that have addressed [article XIII B, section 6](#), has been upon the meaning of the terms "new program" or *736 "increased level of service." In the present case, we are concerned with the meaning of state "mandate."

III.

A.

(1) In its briefs, the Department of Finance asserts that [article XIII B, section 6](#), reflects an intent on the part of the drafters and the electorate to limit reimbursement to costs that are forced upon local governments as a matter of legal compulsion. The Commission's briefs take a similar approach, arguing that reimbursement under the constitutional provision requires a showing that a local entity was "ordered or commanded" to incur added costs. At oral argument,

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both the Department and the Commission retreated somewhat from these positions, and suggested that legal compulsion may not be a necessary condition of a finding of a reimbursable state mandate in all circumstances. For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under [article XIII B, section 6](#), because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.

1.

The Department of Finance and the Commission maintain that the drafters of [article XIII B, section 6](#), borrowed that provision's basic idea and structure—and the gist of its "state mandate" language—from then existing statutes. (See generally [Hayes v. Commission on State Mandates \(1992\) 11 Cal.App.4th 1564, 1577-1581 \[15 Cal.Rptr.2d 547\]](#).) At the time of the drafting and enactment of article XIII B, section 6, former Revenue and Taxation Code section 2231, subdivision (a) (currently [Gov. Code, § 17561](#), subd. (a)) provided: "The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." And at that same time, former Revenue and Taxation Code section 2207 (currently [Gov. Code, § 17514](#)) provided: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the *737 following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program"

As the Department of Finance observes, we frequently have looked to ballot materials in order to inform our understanding of the terms of a measure enacted by the electorate. (See, e.g., [County of Fresno v. State of California, supra, 53 Cal.3d 482, 487](#) [reviewing ballot materials concerning [art. XIII B](#)].) The Department stresses that the ballot materials pertaining to [article XIII B](#) in two places suggested that a state mandate comprises something that a local government entity is required or forced to do. The Legislative Analyst stated: "'State mandates' are requirements imposed on local governments by legislation or executive orders." (Ballot Pamp., Special Statewide Elec. (Nov. 6, 1979) Prop. 4, p. 16, italics added.) Similarly, the measure's proponents

stated that the provision would "not allow the state governments to *force* programs on local governments without the state paying for them." (*Id.*, arguments in favor of Prop. 4, p. 18, capitalization removed, italics added.) The Department concludes that the ballot materials fail to suggest that a reimbursable state mandate might be found to exist outside the context of legal compulsion.

The Department of Finance and the Commission also assert that subsequent judicial construction of former Revenue and Taxation Code sections 2231 and 2207—upon which, as just discussed, [article XIII B, section 6](#), apparently was based—suggests that a narrow meaning was accorded the term "state mandate" at the time [article XIII B, section 6](#), was enacted. The Department relies primarily upon [City of Merced v. State of California \(1984\) 153 Cal.App.3d 777 \[200 Cal.Rptr. 642\]](#) (*City of Merced*). Claimants and amici curiae on their behalf assert that *City of Merced* either is distinguishable or was wrongly decided. We proceed to describe *City of Merced* at some length.

In [City of Merced, supra, 153 Cal.App.3d 777](#), the city wished either to purchase or to condemn (under its eminent domain authority) certain privately owned real property. If the city were to elect to proceed by eminent domain, it would be required by a then recent enactment ([Code Civ. Proc., § 1263.510](#)) to compensate the property owner for loss of its "business goodwill." The city did elect to proceed by eminent domain, and in April 1980 the Merced Superior Court issued a final order in condemnation, directing the city to pay the property owner for the latter's loss of business goodwill. The city did so and then sought reimbursement from the state, arguing that the new statutory requirement that it compensate for business goodwill amounted to a reimbursable state mandate. (*City of Merced*, at p. 780.) *738

The constitutional reimbursement provision contained in [article XIII B, section 6](#), did not become operative until July 1, 1980. Accordingly, the City of Merced sought reimbursement under the then existing statutory authority—Revenue and Taxation Code former sections 2231 and 2207—which, as noted, apparently had served as the model for the constitutional provision.

The State Board of Control—which at the time exercised the authority now exercised by the Commission—agreed with the City of Merced and

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found a reimbursable state mandate. (*City of Merced, supra*, 153 Cal.App.3d 777, 780.) The city's approved claim for reimbursement "was included, along with other similar claims, as a [budget] line item in chapter 1090, Statutes of 1981." (*Ibid.*) The Legislature, however, refused to authorize the reimbursement, and directed the board not to accept, or submit, any future claim for reimbursement for business goodwill costs. (*Ibid.*)

The City of Merced then sought a writ of mandate commanding the Legislature to provide reimbursement. The trial court denied that request, and the Court of Appeal affirmed. The court concluded that, as a matter of law, the city's increased costs flowing from its election to condemn the property did not constitute a reimbursable state mandate. (*City of Merced, supra*, 153 Cal.App.3d 777, 781-783.) The court reasoned: "[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost." (*Id.*, at p. 783.)

The court in *City of Merced, supra*, 153 Cal.App.3d 777, found its construction of former Revenue and Taxation Code sections 2231 and 2207 -as those statutory provisions read at the time they served as the model for [article XIII B, section 6](#)-to be confirmed by the subsequent legislative action amending former Revenue and Taxation Code section 2207 (and related former section 2207.5). As the court explained: "... Senate Bill No. 90 (Russell), 1979-1980 Regular Session ... added [Revenue and Taxation Code section 2207](#), subdivision (h): [¶] ' "Costs mandated by the state" means any increased costs which a local agency is required to incur as the result of the following: [¶] ... [¶] (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which *adds new requirements to an existing optional program or service* and thereby increases the cost of such program or service *if the local agencies have no reasonable alternatives other than to continue the optional program.*' " (*City of Merced, supra*, 153 Cal.App.3d 777, 783-784, italics added.) *739

(Of relevance here, Senate Bill No. 90 (1979-1980 Reg. Sess.) also added a substantively identical

provision to former Revenue and Taxation Code section 2207.5-a specialized section that addressed reimbursable state mandates as they related to a school district.) [FN7]

FN7 Revised section 2207.5 provided that " '[c]osts mandated by the state' means any increased costs which a school district is required to incur as a result of ... [¶] ... [¶] (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1978, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service *if the school districts have no reasonable alternatives other than to continue the optional program.*" (Stats. 1980, ch. 1256, § 5, pp. 4248-4249, eff. July 1, 1981, italics added.)

The court in *City of Merced* continued: "Senate Bill No. 90 became effective on July 1, 1981, [more than a year] after plaintiff incurred the cost of business goodwill for which it seeks reimbursement. Subdivision (h) appears to have been included in the bill to provide for reimbursement of increased costs in an optional program such as eminent domain when the local agency has no reasonable alternative to eminent domain. The legislative history of Senate Bill No. 90 supports the conclusion that subdivision (h) was added to [Revenue and Taxation Code section 2207](#) to extend state liability rather than to clarify existing law." (*City of Merced, supra*, 153 Cal.App.3d 777, 784, italics added.)

After examining two legislative committee reports, [FN8] the court in *City of Merced, supra*, 153 Cal.App.3d 777, asserted that they "characterize Senate Bill No. 90 as expanding the definition of local reimbursable costs. The Legislative Analyst's Report ... on Senate Bill No. 90 similarly includes a statement that the bill expands the definition of state-mandated costs. Such characterizations of the purpose of Senate Bill No. 90 are consistent only with the conclusion that, *until that bill was enacted, increased costs incurred in an optional program such as eminent domain were not state mandated.* Thus the cost of business goodwill for which plaintiff was required [by [Code of Civil Procedure, section 1263.510](#)] to pay in April 1980, was not a state-mandated cost. It follows that the trial court properly denied the *740 petition for a writ of mandamus to

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compel payment of that cost." (*City of Merced, supra*, [153 Cal.App.3d 777, 785](#), italics added.)

FN8 The court in *City of Merced* asserted: "The Report of the Assembly Revenue and Taxation Committee ... includes a statement: 'SB 90 further defines "mandated costs" in Sections 4 and 5 to include the following: [¶]] ... [¶]] e. Where a statute or executive order adds *new requirements to an existing optional program*, which increases costs if the local agency has no reasonable alternative than to continue that optional program.' (Rep., p. 1, italics in original.) [¶]] Additionally, the Ways and Means Committee's Staff Analysis ... notes that Senate Bill No. 90: 'Expands the definition of *local* reimbursable costs mandated and paid by the state to include: [¶]] ... [¶]] e. Statutes or executive orders adding *new requirements to an existing optional program*, which increases costs if the local agency has no reasonable alternative than to continue that optional program.' (P. 2, italics in original.)" (*City of Merced, supra*, [153 Cal.App.3d at p. 784](#).)

In other words, the court in *City of Merced* concluded that former Revenue and Taxation Code sections 2231 and 2207, as they read at the time they served as the model for [article XIII B, section 6](#), contemplated a narrow definition of reimbursable state mandate, and not the subsequently expanded definition of reimbursable state mandate found in the 1981 amendments to the Revenue and Taxation Code. [FN9]

FN9 We need not, and do not, decide whether the court in *City of Merced, supra*, [153 Cal.App.3d 777](#), correctly characterized the statutory history of the 1981 amendments to the Revenue and Taxation Code.

A few months after the Court of Appeal filed its opinion in *City of Merced, supra*, [153 Cal.App.3d 777](#), the Legislature overhauled the law pertaining to state mandates and reimbursements by amending both the Revenue and Taxation Code and the Government Code. (Stats. 1984, ch. 1459, p. 5113.)

The Department of Finance and the Commission assert that two aspects of the legislative overhaul are particularly relevant to the issue we address here.

First, the Department of Finance and the Commission assert that the Legislature enacted a new section of the Government Code—[section 17514](#)—in order to implement the reimbursable-state-mandate directive of [article XIII B, section 6](#). [FN10] The Department and the Commission assert that in enacting that provision, the Legislature readopted the original, *narrow* definition of reimbursable state mandate found in the initial versions of former Revenue and Taxation Code section 2207—which, the Department and the Commission maintain, existed at the time [article XIII B, section 6](#), was drafted and adopted, and which defined "costs mandated by the state" as those "which a local agency is *required* to incur." (See Stats. 1975, ch. 486, § 1.8, p. 997 [Rev. & Tax. Code, former § 2207]; Stats. 1977, ch. 1135, § 5, p. 3646 [Rev. & Tax. Code, former § 2207]; Stats. 1984, ch. 1459, § 1, p. 5114 [[Gov. Code, § 17514](#)], italics added.) This same statutory language also had been recently construed at that time in *City of Merced, supra*, [153 Cal.App.3d 777](#), as recognizing as a reimbursable state mandate only that imposed when the local entity is legally compelled to engage in the underlying practice or program. *741

FN10 [Government Code section 17514](#) reads: "'Costs mandated by the state' means any increased costs which a local agency or school district is *required* to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." (Italics added.)

Second, the Department of Finance and the Commission observe, in enacting [Government Code section 17514](#), the Legislature also provided that the use of the broader definition contained in the *amended* versions of Revenue and Taxation Code former sections 2207 and 2207.5 (which became effective July 1, 1981) should be phased out, but that the definition could be used to determine claims that arose prior to 1985. (See Stats. 1984, ch. 1459, § 1, p. 5123; 68 Ops.Cal.Atty.Gen. 224 (1985).)

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In other words, the Department of Finance and the Commission assert, in the Legislature's 1984 overhaul of the statutory scheme implementing [article XIII B, section 6](#), the Legislature embraced and codified the narrow definition of reimbursable state mandate set out in former Revenue and Taxation Code section 2207 (and construed in *City of Merced*) as the appropriate test in implementing the constitutional provision. Moreover, the Department and the Commission maintain, the Legislature limited the continued use of the broader definition of a statutorily imposed reimbursable state mandate (set out in the amendments to former Revenue and Taxation Code sections 2207 and 2207.5, effective in mid-1981) to a small and ever-decreasing number of cases. Five years later, the Legislature repealed former Revenue and Taxation Code sections 2207 and 2207.5 (see Stats. 1989, ch. 589, § § 7 & 8, p. 1978)-thereby finally discarding the broad definition of statutorily imposed reimbursable state mandate found in subdivision (h) of each of those statutes.

As noted above, the Department of Finance and the Commission assert in their briefs that based upon the language of [article XIII B, section 6](#), and the statutory and case law history described above, the drafters and the electorate must have intended that a reimbursable state mandate arises only if a local entity is "required" or "commanded" -that is, legally compelled-to participate in a program (or to provide a service) that, in turn, leads unavoidably to increasing the costs incurred by the entity. (*City of Merced, supra*, 153 Cal.App.3d 777, 783; see also *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174 [275 Cal.Rptr. 449] [construing the term "mandates," for purposes of [art. XIII B, § 6](#), "in the ordinary sense of 'orders' or 'commands'"]; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284 [101 Cal.Rptr.2d 784] (*County of Sonoma*) [Legislature's interpretation of [art. XIII B, § 6](#), in [Gov. Code, 17514](#), as limited to "costs which a ... school district is *required to incur*" is entitled to great weight].) [FN11] *742

FN11 Although, as described immediately below (in pt. III.A.2.), the Commission attempts to defend on other grounds its determination below in favor of claimants, the Commission strongly disputes the Court of Appeal's broad interpretation of state mandate as encompassing circumstances in

which a local entity is not "ordered or commanded" to perform a task that in turn requires it to incur additional costs.

2.

Claimants and amici curiae on their behalf assert that even if "legal compulsion" is the governing standard, they meet that test because, they argue, claimants have been legally compelled to incur compliance costs under [Government Code section 54952](#) and [Education Code section 35147](#), subdivision (c). The Commission-but not the Department-supports claimants' proposed application of the legal compulsion test.

In so arguing, claimants focus upon the circumstance that a school district *that participates* in one of the underlying programs listed in [Education Code section 35147](#), subdivision (b), must comply with program requirements, including the statutory notice and agenda obligations, set out in [Government Code section 54952](#) and [Education Code section 35147](#), subdivision (c). Claimants assert: "[O]nce [a district] participates in one of the educational programs at issue, it does not thereafter have the option of performing that activity in a manner that avoids incurring costs mandated by amended [Government Code section 54952](#) and [Education Code section 35147](#)."

The Department of Finance, relying upon *City of Merced, supra*, 153 Cal.App.3d 777, asserts that claimants err by focusing upon a school district's legal obligation to comply with program conditions, rather than focusing upon whether the school district has a legal obligation to participate in the underlying program to which the conditions attach. As suggested above, the core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds-even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. (*Id.*, at p. 783.) Claimants concede that *City of Merced* conflicts with their contrary view, but they assert that the opinion is distinguishable and ask us to decline to follow, or extend, that decision.

Claimants stress-as we acknowledged above-that

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City of Merced, supra, 153 Cal.App.3d 777, was decided in the context of an eminent domain proceeding, and that the appellate court was engaged in construing the *statutory* reimbursement scheme rather than article XIII B, section 6. Claimants also assert that although the City of Merced had discretion whether or *743 not to exercise its power of eminent domain, and was under no compulsion to do so, in the present case "school site council and advisory committee meetings cannot be held in a manner that avoids application of [the requirements of] Government Code section 54952 and Education Code section 35147."

The points relied upon by claimants neither call into doubt nor persuasively distinguish City of Merced, supra, 153 Cal.App.3d 777. The truer analogy between that case and the present case is this: In City of Merced, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. [FN12]

FN12 The Commission further attempts to distinguish City of Merced, supra, 153 Cal.App.3d 777, by observing that the eminent domain statute at issue in that case made clear, in the *same* statute that imposed the requirement that an entity employing eminent domain also compensate for lost business goodwill, the discretionary nature of the decision whether to acquire property by purchase or instead by eminent domain. The Commission argues that no such express statement concerning local government discretion is set out in the statutes here at issue. As we explain *post*, part III.A.3.a., however, the underlying program statutes at issue in this case (with one possible exception-see *post*, pt. III.A.3.b.) make it clear that school districts retain the discretion not to participate in any given underlying program-and, as we explain *post*, footnote 22, the circumstance

that the notice and agenda requirements of these elective programs were enacted *after* claimants first chose to participate in the programs does not make claimants' choice to continue to participate in those programs any less voluntary.

We therefore reject claimants' assertion that merely because they participate in one or more of the various education-related funded programs here at issue, the costs they incurred in complying with program conditions have been legally compelled and hence constitute reimbursable state mandates. We instead agree with the Department of Finance, and with City of Merced, supra, 153 Cal.App.3d 777, that the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves.

3.

Turning to that question-and without deciding whether a finding of legal compulsion to participate in an underlying program is *necessary* in order to establish a right to reimbursement under article XIII B, section 6-we *744 conclude, upon review of the applicable statutes, that claimants are, and have been, free from legal compulsion as to eight of the nine underlying funded programs here at issue. As to one of the funded programs, we shall assume, for purposes of analysis, that a district's participation in the program is in fact legally compelled.

a.

It appears to be conceded that, as to most of the nine education-related funded programs at issue, school districts are not legally compelled to participate in those programs. For example, the American Indian Early Childhood Education Program (Ed. Code, § 52060 et seq.), which implements projects designed to develop and test educational models to increase reading and math competence of students in preschool and early grades, states that school districts "may apply" to be included in the project (*id.*, § 52063) and, if accepted to participate, will receive program funding (*id.*, § 52062). Education Code section 52065 in turn states that each school district that receives funds provided by section 52062 "shall establish a districtwide American Indian advisory committee for American Indian early childhood education." Plainly, a school district's initial and continued participation in the program is voluntary, and the obligation to establish or maintain an

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advisory committee arises only if the district elects to participate in, or continue to participate in, the program. Although the language of most of the other implementing statutes varies, they generally follow this same approach, with the same result: Participation in most of the programs listed in [Education Code section 35147](#) is voluntary, and the obligation to establish or maintain a site council or advisory committee arises only if a district elects to participate in, or continue to participate in, the particular program.

Although *claimants* do not assert that they have been legally compelled to participate in *any* underlying program for which they have sought reimbursement for their compliance costs-and, indeed, their briefing suggests the opposite [FN13] -the Commission and amicus curiae Education Legal Alliance assert that the school improvement program (a "sunsetting," but still funded, program that disburses funds for all aspects of school operation and performance; [Ed. Code, § § 52012](#) et seq., [62000](#), [62000.2](#), subd. (b), [62002](#)) legally compels school districts to establish site councils without regard to whether the district participates in the underlying funded program to which the site councils apply. The Commission and amici curiae rely upon [Education Code section 52010](#), which states in relevant part: "*With the exception of *745 subdivisions (a) and (b) of Section 52011, the provisions of this chapter shall apply only to school districts and schools which participate in school improvement programs authorized by this article.*" (Italics added.) Section 52011, subdivision (b), in turn provides that "each school district shall: [¶] ... [¶] (b) *Adopt policies* to ensure that prior to scheduled phase- in, a school site council as described in [Section 52012](#) is established at each school site to consider whether or not it wishes the local school to participate in the school improvement program." (Italics added.)

FN13 Claimants at one point characterize themselves as having "*decided* to participate in the programs listed in [Education Code section 35147](#)." (Italics in added.)

The Commission and amici curiae read these provisions as requiring all schools and school districts throughout the state to "establish a school site council even if the school [or district] does not participate in the school improvement program." We disagree. Reasonably construed, the statutes require

only that a school district adopt "policies" (i.e., a *plan*) "to ensure" that *if* the district elects to participate in the School Improvement Program, a school site council *will*, "prior to phase-in" of the districtwide program, exist at each school, so that each individual school will be able to decide whether it wishes to participate in the district's program. In other words, the statutes require that districts adopt policies or plans for school site councils-but the statutes do not require that districts adopt councils themselves unless the district first elects to participate in the underlying program. [FN14]

FN14 Amicus curiae California School Boards Association suggests that provisions of two other programs-the School-Based Program Coordination Act ([Ed. Code, § 52850](#) et seq.) and the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act ([Ed. Code, § 54720](#) et seq.)-require that site councils be established, whether or not the school district participates in the underlying program. In both instances, the statutes make it clear that "prior to a school beginning to develop a [program] plan," the district first must establish a local school site council that in turn will "consider whether or not it wishes the local school to participate in the" program. Amicus curiae misreads the statutes; in both instances, the statutes make it clear that these requirements apply "only to school districts and schools *which participate in*" the respective programs (see [Ed. Code, § § 52850, 54722](#), italics added), and each statutory scheme provides that school site councils "shall be established at each school *which participates in*" the program. (*Id.*, [§ § 52852, 54722](#), italics added.)

We therefore conclude that, as to eight of the nine funded programs, the statutory notice and agenda obligations exist and apply to claimants only because they have *elected* to participate in, or continue to participate in, the various underlying funded programs-and hence to incur notice and agenda costs that are a condition of program participation. Accordingly, no reimbursable state mandate exists with regard to any of these programs based upon a theory that such costs were incurred under legal compulsion. [FN15] *746

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FN15 In this case, we have no occasion to decide whether a reimbursable state mandate would arise in a situation in which a local entity voluntarily has elected to participate in a program but also has committed to continue its participation for a specified number of years, and the state imposes additional requirements at a time when the local entity is not free to end its participation.

b.

The Commission and amicus curiae Education Legal Alliance also assert that the Chacon-Moscone Bilingual-Bicultural Education Act of 1976 (another "sunsetting," but still funded, program; [Ed. Code, § § 52160](#) et seq., [62000](#), [62000.2](#), subd. (d), 62002) legally compels school districts to establish advisory committees, regardless whether the district participates in the underlying funded program to which the advisory committees apply. The Commission and amicus curiae rely upon [Education Code section 52176](#)'s command that each school district with more than 50 pupils of limited English language proficiency, and each school within that district with more than 20 pupils of such proficiency, "shall establish a districtwide [or individual school site] advisory committee on bilingual education." (*Id.*, subds. (a) & (b), italics added.)

The Department of Finance responds that because the Chacon-Moscone Bilingual- Bicultural Education program sunsetted in 1987, school districts that have participated in that program since that date have done so not as a matter of legal compulsion, but by their own choice made when they applied for and were granted such program funds.

We note some support for the Department's view. [Education Code section 64000](#) et seq., which governs the funding application process, includes the "sunsetting" Chacon-Moscone Bilingual-Bicultural Education program as one of many optional programs for which a district *may* seek funding. (*Id.*, subd. (a)(4).) But, the Commission argues, another statutory provision suggests that Chacon-Moscone Bilingual-Bicultural Education program advisory committees are mandatory in any event. The Commission notes that section 62002.5 provides that advisory committees "which are in existence pursuant

to statutes or regulations as of January 1, 1979, shall continue subsequent to termination of funding for the programs sunsetted by this chapter." (Italics added.)

We need not, and do not, determine whether claimants have been legally compelled to participate in the Chacon-Moscone Bilingual-Bicultural Education program, or to maintain a related advisory committee. Even if we assume for purposes of analysis that claimants have been legally compelled to participate in the Chacon-Moscone Bilingual-Bicultural Education program, we nevertheless conclude that under the circumstances here presented, *747 the costs necessarily incurred in complying with the notice and agenda requirements under that funded program do not entitle claimants to obtain reimbursement under [article XIII B, section 6](#), because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda-related expenses.

We note that, based upon the evaluations made by the Commission, the costs associated with the notice and agenda requirements at issue in this case appear rather modest. [FN16] And, even more significantly, we have found nothing to suggest that a school district is precluded from using a portion of the funds obtained from the state for the implementation of the underlying funded program to pay the associated notice and agenda costs. Indeed, the Chacon-Moscone Bilingual-Bicultural Education program explicitly authorizes school districts to do so. (See [Ed. Code, § 52168](#), subd. (b) ["School districts may claim funds appropriated for purposes of this article for expenditures in, but not limited to, the following categories: [¶] ... [¶] (6) Reasonable district administrative expenses".]) We believe it is plain that the costs of complying with program-related notice and agenda requirements qualify as "[r]easonable district administrative expenses." Therefore, even if we assume for purposes of analysis that school districts have been legally compelled to participate in the funded Chacon-Moscone Bilingual-Bicultural Education program, we view the state's provision of program funding as satisfying, in advance, any reimbursement requirement.

FN16 Costs of compliance with the notice and agenda requirements have been estimated as amounting to approximately \$90 per meeting for the 1994-1995 fiscal year, and incrementally larger amounts in

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subsequent years, up to \$106 per meeting for the 2000-2001 fiscal year, for each committee or advisory council. (See State Controller, State Mandated Costs Claiming Instrns. No. 2001-08, School Site Councils and Brown Act Reform (June 4, 2001), Parameters and Guidelines (Mar. 29, 2001) [and implementing forms].) Under these formulae, a district that has 10 schools, each with one council or advisory committee that meets 10 times a year, would be forced to incur approximately \$9,000 to \$10,000 in costs to comply with statutory notice and agenda requirements. Presumably, such costs are minimal relative to the funds allocated by the state to the school district under these programs. (We hereby grant the Commission's request that we take judicial notice of these and related documents, and of the Commission's December 13, 2001 Statewide Cost Estimate for reimbursement to school districts of notice and agenda-related expenses.)

It is conceivable, with regard to some programs, that increased compliance costs imposed by the state might become so great-or funded program grants might become so diminished-that funded program benefits would not cover the compliance costs, or that expenditure of granted program funds on administrative costs might violate a spending limitation set out in applicable regulations or statutes. In those circumstances, a compulsory program participant likely would be able to establish the existence of a reimbursable *748 state mandate under [article XIII B, section 6](#). But that certainly is not the situation faced by claimants in this case. At most, claimants, by being compelled to incur notice and agenda compliance costs-and pay those costs from program funds-have suffered a relatively minor diminution of program funds available to them for substantive program purposes. The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable [state mandate](#). (See [County of Sonoma, supra](#), 84 Cal.App.4th 1264 [art. XIII B, § 6, provides no right of reimbursement when the state *reduces* revenue granted to local government].) Nor is there any reason to believe that use of granted program funds to pay the relatively modest costs here at issue would violate any applicable spending limitation. [FN17]

FN17 With regard to the Chacon-Moscone Bilingual-Bicultural Education program, claimants assert that "[s]tate regulations place a ceiling on the amount of program funds that may be expended for indirect costs at three percent of the district's funding" (See [Cal. Code Regs., tit. 5, § § 3900](#), subd. (g) & 3947, subd. (a).) As the Department observes, applicable statutory provisions appear to set the limit for such expenses for the *same* program at no more than 15 percent of granted program funds. (See [Ed. Code, § § 63000](#), subd. (d), 63001.) Even assuming, for purposes of analysis, that the regulation, and not the statute, applies with regard to this program, it seems clear that the notice and agenda costs here at issue fall far below 3 percent of granted program funds. Indeed, claimants concede: "The notice and agenda costs at issue are administrative costs that appear to fall within [the regulatory] provisions."

We therefore conclude that because claimants are and have been free to use funds from the Chacon-Moscone Bilingual-Bicultural Education program to pay required program expenses (including the notice and agenda costs here at issue), claimants are not entitled under [article XIII B, section 6](#), to reimbursement from the state for such expenses.

B.

(2a) Claimants contend that even if they have not been *legally compelled* to participate in most of the programs listed in [Education Code section 35147](#), subdivision (b), and hence have not been *legally required* to incur the related notice and agenda costs, they nevertheless have been compelled as a practical matter to participate in those programs and hence to incur such costs. Claimants assert that school districts have "had no true option or choice but to participate in these [underlying education-related] programs. *This absence of a reasonable alternative to participation is a de facto mandate.*" As explained below, on the facts of this case, we disagree. *749

1.

Claimants and amici curiae supporting them, relying upon this court's broad interpretation of the federal

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mandate provision of [article XIII B, section 9](#), [FN18] in [City of Sacramento, supra, 50 Cal.3d 51, 70-76](#), assert that we should recognize and endorse such a broader construction of [section 6](#) of that article—a construction that does not limit the definition of a reimbursable state mandate to circumstances of legal compulsion.

FN18 That provision states: " 'Appropriations subject to limitation' for each entity of government do not include: [¶] ... [¶] (b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

In [City of Sacramento, supra, 50 Cal.3d 51](#), we considered whether various federal "incentives" for states to extend unemployment insurance coverage to all public employees constituted a reimbursable state mandate under [article XIII B, section 6](#), or a federal mandate within the meaning of [article XIII B, section 9](#).

We concluded in [City of Sacramento, supra, 50 Cal.3d 51](#), that there was no reimbursable state mandate under [article XIII B, section 6](#), because the implementing state legislation did not impose any new or increased "program or service," or "unique" requirement, upon local entities. (*City of Sacramento*, at pp. 66-70.)

Turning to the question whether the state legislation constituted a "federal mandate" under [article XIII B, section 9](#), we acknowledged in [City of Sacramento, supra, 50 Cal.3d 51](#), that there was no legal compulsion requiring the states to participate in the federal plan to extend unemployment insurance coverage to all public employees. We nevertheless found that the costs related to the program constituted a federal mandate, for purposes of [article XIII B, section 9](#). Our opinion concluded that because the financial consequences to the state and its residents of failing to participate in the federal plan were so onerous and punitive—we characterized the consequences as amounting to "certain and severe federal penalties" including "double ... taxation" and other "draconian" measures (*City of Sacramento*, at p. 74)—as a practical matter, for purposes of [article XIII](#)

[B, section 9](#), the state was mandated to participate in the federal plan to extend unemployment insurance coverage. *750

Claimants, echoing the reasoning of the Court of Appeal below, assert that because this court in [City of Sacramento, supra, 50 Cal.3d 51](#), broadly construed the term "federal mandate"—to include not only the situation in which a state or local entity is itself legally compelled to participate in a program and thereby incur costs, but also the situation in which the governmental entity's participation in the federal program is the coerced result of severe penalties that would be imposed for noncompliance—consistency requires that we afford a similarly broad construction to the concept of a state mandate. In other words, claimants argue, the word "mandate," used in two separate sections of [article XIII B](#), should not be given two different meanings.

The Department and the Commission disagree. They assert that, to begin with, a finding of a *federal mandate* under [section 9 of article XIII B](#) has a wholly different purpose and effect as compared with a finding of a *state mandate* under [section 6](#) of that article. The Department and the Commission argue that although a finding of a state mandate may result in reimbursement from the state to a local entity for costs incurred by the local entity, expenditures made in order to comply with a federal mandate are excluded from the constitutional spending cap imposed by [article XIII B](#) upon any affected state or local entity, because such expenditures are not considered to be an exercise of the state or local authority's discretionary spending authority.

Moreover, the Department and the Commission assert, our conclusion in [City of Sacramento, supra, 50 Cal.3d 51](#), regarding the proper construction of [article XIII B, section 9](#), relied upon "crucial facts" (*City of Sacramento*, at p. 73) that do not pertain to the wholly separate issue that we face here—the proper interpretation of [article XIII B, section 6](#). They observe that, as we explained in *City of Sacramento*, when [article XIII B](#) was enacted: "First, the power of the federal government to impose its direct regulatory will on state and local agencies was *then* sharply in doubt. [FN19] Second, in conformity with this principle, the vast bulk of cost-producing federal influence on government at the state and local levels was by inducement or incentive rather than direct [legal] compulsion. That remains so to this day. [¶] Thus, if [article XIII B](#)'s reference to 'federal mandates' were limited to strict legal compulsion by

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the federal government, it would have been largely superfluous. It is well settled that 'constitutional ... enactments must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people. [Citations.]' (*751 *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281].) While '[a] constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words[,] [citation] [, t]he literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. [Citations.]' (*Ibid.*)" (*City of Sacramento, supra*, 50 Cal.3d 51, 73, fns. omitted.)

FN19 See discussion in *City of Sacramento, supra*, 50 Cal.3d at pages 71-73.

The Department of Finance and the Commission argue that these factors have no bearing upon the proper interpretation of what constitutes a state mandate under [article XIII B, section 6](#). (3)(See **fn. 20**) They assert that, unlike the federal government, which for a time was severely restricted in its ability to directly impose legal requirements upon the states (see *City of Sacramento, supra*, 50 Cal.3d 51, 71-73), the State of California has suffered no such restriction, vis-a-vis local government entities, except in matters involving purely local affairs. [FN20] (2b) Accordingly, the Department and the Commission argue, in contrast with the situation we faced when construing [article XIII B, section 9](#), we would not render superfluous the restriction in [section 6](#) of that article, were we narrowly to interpret its term "mandate" to include only programs in which local entities are legally compelled to participate.

FN20 Unlike the federal-state relationship, sovereignty is not an issue between state and local governments. Claimant school districts are agencies of the state, and not separate or distinct political entities. (See *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].)

We find it unnecessary to resolve whether our reasoning in *City of Sacramento, supra*, 50 Cal.3d 51, applies with regard to the proper interpretation of the

term "state mandate" in [section 6 of article XIII B](#). Even assuming, for purposes of analysis only, that our construction of the term "federal mandate" in *City of Sacramento, supra*, 50 Cal.3d 51, applies equally in the context of [article XIII, section 6](#), for reasons set out below we conclude that, contrary to the situation we described in that case, claimants here have not faced "certain and severe ... penalties" such as "double ... taxation" and other "draconian" consequences (*City of Sacramento, supra*, 50 Cal.3d at p. 74), and hence have not been "mandated," under [article XIII, section 6](#), to incur increased costs.

2.

(4) As we observed in *County of San Diego, supra*, 15 Cal.4th 68, 81, [article XIII B, section 6](#)'s "purpose is to preclude the state from shifting *752 financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities." (2c) In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under [article XIII B, section 6](#), properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.

As noted, claimants argue that they have had "no true option or choice" but to participate in the various programs here at issue, and hence to incur the various costs of compliance, and that "the absence of a reasonable alternative to participation is a de facto [reimbursable state] mandate." In the same vein, amici curiae on behalf of claimants emphasize that as a practical matter, many school districts depend upon categorical funding for various programs. Amicus curiae California State Association of Counties asks us to interpret [article XIII B, section 6](#), as providing state reimbursement for programs that are "indirectly state mandated." (Italics added.) Amicus curiae Education Legal Alliance goes so far as to assert that unless we recognize a right to reimbursement for costs such as those here at issue, "California schools could be forced to [forgo] participation in important categorical programs that supply necessary financial and educational support to those segments of the student population that need the most assistance. Alternatively, California schools could be forced to cut other student programs or services to fund these procedural requirements."

The record in the case before us does not support claimants' characterization of the circumstances in

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which they have been forced to operate, and provides no basis for resolving the accuracy of amici curiae's warnings and predictions. Indeed, we are skeptical of the assertions of claimants and amici curiae.

As observed *ante* (fn. 16), the costs associated with the notice and agenda requirements at issue in this case appear rather modest. Moreover, the parties have not cited, nor have we found, anything in the governing statutes or regulations, or in the record, to suggest that a school district is precluded from using a portion of the program funds obtained from the state to pay associated notice and agenda costs. As noted above, under the Chacon-Moscone Bilingual-Bicultural Education program ([Ed. Code, § 52168](#), subd. (b)(6)), such authority has been granted. As to three of the remaining programs here at issue, such authority also is explicit, or at least strongly implied. (See [20 U.S.C. § 7425\(d\)](#) [federal Indian Education Program]; [*753 Ed. Code, §§ 63000](#), subds. (c), (g), 63001 [school improvement program and McAteer Act].) We do not perceive any reason why the Legislature would contemplate a different rule for any of the other programs here at issue, and claimants have advanced no such reason. [FN21]

FN21 Nor is there any reason to believe that expenditure of granted program funds on the notice and agenda costs at issue would violate any spending limitation set out in applicable regulations or statutes. Claimants assert that with regard to the school improvement programs, state regulations ([Cal. Code Regs., tit. 5, § 3900](#), subd. (b), 3947, subd. (a)) limit spending on administrative expenses to no more than 3 percent of granted program funds. As the Department observes, applicable statutory provisions appear to set the limit for such expenses for the *same* program at no more than 15 percent of granted program funds. (See [Ed. Code, §§ 63000](#), subd. (c), 63001.) But even assuming, for purposes of analysis, that the regulations apply with regard to this program, claimants have made no showing that the notice and agenda costs here at issue exceed 3 percent of granted program funds. As noted *ante*, at page 732, statewide program grants for the school improvement programs alone amounted to approximately \$394 million in fiscal year 1998-1999. According to the Commission, statewide notice and agenda costs for *all*

nine of the programs here at issue amounted to only \$5.2 million during that same period. (See Com. on State Mandates, Adopted Statewide Cost Estimate, Dec. 13, 2001, p. 1.)

Similarly, claimants have not demonstrated that the notice and agenda costs here at issue exceed the administrative costs spending limitations set for the federal Indian Education Program (see [20 U.S.C. § 7425\(d\)](#) [5 percent limitation]) and for the McAteer Act's "compensatory education programs" (see [Ed. Code, §§ 63000](#), subd. (g), 63001 [15 percent limitation].)

As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the notice and agenda requirements, or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation—in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits.

In essence, claimants assert that their participation in the education-related programs here at issue is so beneficial that, as a practical matter, they feel they must participate in the programs, accept program funds, and by virtue of [Government Code section 54952](#) and [Education Code section 35147](#)—incur expenses necessary to comply with the procedural conditions imposed on program participants. Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of [*754](#) continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary. [FN22] (See

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County of Sonoma, supra, 84 Cal.App.4th 1264 [art. XIII B, § 6, provides no right of reimbursement when the state *reduces* revenue granted to local government].) We reject the suggestion, implicit in claimants' argument, that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation.

FN22 Claimants assert that the notice and agenda requirements were imposed for the first time by Government Code section 54952 and Education Code section 35147 in the mid-1990's-"after the school districts decided to participate in the programs listed in Education Code section 35147." Even if we assume, contrary to the opposing position of the Department of Finance, that claimants first were subjected to notice and agenda requirements only after their respective school districts elected to participate in the programs, a school district's *continued* participation in the programs would be no less voluntary. As noted above, school districts have been, and remain, legally free to decline to continue to participate in the eight programs here at issue.

In sum, the circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants' phrasing, a "de facto" reimbursable state mandate. Contrary to the situation that we described in City of Sacramento, supra, 50 Cal.3d 51, a claimant that elects to discontinue participation in one of the programs here at issue does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences (*id.*, at p. 74), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6.

IV

For the reasons stated, we conclude that claimants have failed to establish that they are entitled to reimbursement under article XIII B, section 6, of the California Constitution, with regard to any of the

program costs here at issue. *755

The judgment of the Court of Appeal is reversed.

Kennard, J., Baxter, J., Werdegar, J., Chin, J., Brown, J., and Moreno, J., concurred. *756

For California Supreme Court Briefs See: 2002 WL 31940304 (Appellate Brief), PETITIONER'S OPENING BRIEF, (November 18, 2002)

For California Supreme Court Briefs See: 2003 WL 1919563 (Appellate Brief), PETITIONER'S REPLY BRIEF ON THE MERITS, (January 24, 2003)

For California Supreme Court Briefs See: 2002 WL 32080761 (Appellate Brief), ANSWER BRIEF ON THE MERITS RESPONDING BRIEF BY REAL PARTY IN INTEREST AND RESPONDENT, SAN DIEGO UNIFIED SCHOOL DISTRICT, (December 16, 2002)

For California Supreme Court Briefs See: 2002 WL 32080762 (Appellate Brief), ANSWER BRIEF OF RESPONDENT, COMMISSION ON STATE MANDATES, (December 18, 2002)

Cal. 2003.

DEPARTMENT OF FINANCE, Plaintiff and Appellant, v. COMMISSION ON STATE MANDATES, Defendant and Respondent; KERN HIGH SCHOOL DISTRICT et al., Real Parties in Interest and Respondents.

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[Briefs and Other Related Documents](#)

Court of Appeal, Second District, Division 7,
 California.

COUNTY OF LOS ANGELES, Plaintiff and
 Respondent,

v.

COMMISSION ON STATE MANDATES,
 Defendant and Appellant;
 Department of Finance, Real Party in Interest and
 Appellant.

No. B156870.

July 28, 2003.

Background: County petitioned for writ of mandate, seeking to vacate decision of the Commission on State Mandates which denied county's test claim for costs associated with statute requiring local law enforcement officers to participate in two hours of domestic violence training. The Superior Court, Los Angeles County, No. BS06497, Dzintra I. Janavs, J., granted the petition. Commission appealed.

Holding: The Court of Appeal, Muñoz (Aurelio), J., sitting by assignment, held that statute did not mandate any increased costs and thus Commission was not required to reimburse county for its costs.

Reversed with directions.

West Headnotes

[1] Mandamus 73(1)
[250k73\(1\) Most Cited Cases](#)

Administrative mandamus is the exclusive means to challenge a decision of the Commission on State Mandates on a subvention claim. [West's Ann.Cal.Gov.Code § 17559](#).

[2] States 111
[360k111 Most Cited Cases](#)

Trial court reviews the decision of the Commission

on State Mandates under the substantial evidence standard. [West's Ann.Cal.Gov.Code § 17559](#).

[3] Administrative Law and Procedure 683
[15Ak683 Most Cited Cases](#)

When the substantial evidence test is applied by the trial court to review an administrative decision, the Court of Appeal is generally confined to inquiring whether substantial evidence supports the court's findings and judgment; however, it independently reviews the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions.

[4] States 111
[360k111 Most Cited Cases](#)

Reimbursement to a county for costs incurred under a state mandate is not required unless there is a showing of actual increased costs mandated by the state. [West's Ann.Cal. Const. Art. 13B, § 6](#).

[5] Municipal Corporations 863
[268k863 Most Cited Cases](#)

[5] Municipal Corporations 956(1)
[268k956\(1\) Most Cited Cases](#)

[5] States 115
[360k115 Most Cited Cases](#)

[5] Taxation 37.5
[371k37.5 Most Cited Cases](#)

Goal of propositions which imposed limit on the power of state and local governments to adopt and levy taxes and complementary limit on governmental spending is to protect citizens from excessive taxation and government spending. [West's Ann.Cal. Const. Art. 13A, § 1](#) et seq.; [Art. 14, § 1](#) et seq.

[6] States 111
[360k111 Most Cited Cases](#)

The state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [West's Ann.Cal. Const. Art. 13B, § 6](#).

[\[7\] States !\[\]\(2a1036d3abb9ea6c61440ebc8d75cba1_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

A "program" falling within constitution section requiring state to pay for increased costs associated with state mandates is defined as a program which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[8\] States !\[\]\(35dbf2e9c927dc46b8ae5b24530f51b6_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

A program falling under constitution section requiring state to pay for increased costs associated with state mandates is a "new program" if the local governmental entity had not previously been required to institute it. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[9\] States !\[\]\(89710c195a4068404f34e4f4b42dfcdb_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

"State mandates" are requirements imposed on local governments by legislation or executive orders. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[10\] States !\[\]\(884fd3a327eaf25ca77fa11a7478b0a3_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

Purpose of constitution section requiring state to pay for increased costs associated with state mandates is to avoid governmental programs from being forced on localities by the state. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[11\] States !\[\]\(e2ab49c7842bbdf7c31ed647dfc41e3c_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

Programs which are not unique to the government do not qualify as programs for which the state is required to pay increased costs pursuant to constitutional provision governing funding of state mandates; the programs must involve the provision of governmental services. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[12\] States !\[\]\(dd5040ef4d0c9e8d3c117305f60b0d17_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

In order for a state mandate to be found under

constitution section requiring state to pay for increased costs associated with state mandates, the local governmental entity must be required to expend the proceeds of its tax revenues. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[13\] States !\[\]\(03eca12f15dc08c93f3ce1bdbf405209_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

In order for a state mandate to be found under constitution section requiring state to pay for increased costs associated with state mandates, there must be compulsion to expend revenue. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[14\] States !\[\]\(67368154d16fe71788667f744a21503c_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

Statute requiring local law enforcement officers to participate in two hours of domestic violence training did not mandate any increased costs and thus Commission on State Mandates was not required to reimburse county for its costs associated with the mandate even though county had added two hours to its Peace Officer Standards and Training (POST); statute directed local law enforcement agencies to reallocate training resources rather than to add training, and state did not shift cost of a program previously administered and funded by the state. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

See 9 Witkin, Summary of Cal. Law (9th ed. 1988) Taxation, § 123A; 3 Witkin, Cal. Procedure (4th ed. 1997) Actions, § 614.

[\[15\] States !\[\]\(a80e0e0359efa2c78da265b6dbd889f3_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement under constitutional section requiring state to pay for increased costs associated with state mandate. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[16\] States !\[\]\(c7c780fee5cb7b1f00baff0b57608d81_img.jpg\) 111](#)
[360k111 Most Cited Cases](#)

Under constitution section requiring state to pay for increased costs associated with state mandates, "costs" does not necessarily equal every increase in a locality's budget resulting from compliance with a new state directive; rather, the state must be

attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[17\] States](#)  [111](#)
[360k111 Most Cited Cases](#)

Legislative disclaimers, findings, and budget control language are not determinative to a finding of a state mandated reimbursable program. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[18\] States](#)  [111](#)
[360k111 Most Cited Cases](#)

Not every increase in cost that results from a new state directive automatically results in a valid subvention claim, especially if the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

****422*1178** [Lloyd W. Pellman](#), County Counsel and Stephen R. Morris, Principal Deputy County Counsel, for Plaintiff and Respondent County of Los Angeles.

[Paul M. Starkey](#), [Camille Shelton](#), Sacramento, and Katherine Tokarski, for Defendant and Appellant Commission on State Mandates.

[Bill Lockyer](#), Attorney General, [Andrea Lynn Hoch](#), Senior Assistant Attorney General, Louis R. Mauro and [Catherine M. Van Aken](#), Supervising Deputy Attorneys General and [Geoffrey L. Graybill](#), Deputy Attorney General, for Real Party in Interest and Appellant Department of Finance.

MUÑOZ (AURELIO), J. [\[FN*\]](#)

[FN*](#) Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution.](#)

A 1995 amendment to [Penal Code section 13519](#) [\[FN1\]](#) requires local law enforcement officers to participate in two hours of domestic violence training. The issue on appeal is whether this

amendment resulted in a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) for the time spent by local law enforcement officers in such domestic violence training, although such officers were already required to spend 24 hours in continuing education training and the domestic violence training could be included within this total.

[FN1.](#) Hereafter [section 13519.](#)

This administrative mandamus proceeding was commenced by the County of Los Angeles (County) on a "test claim" filed with and denied by the ***1179** Commission on State Mandates (Commission) for the County's costs incurred pursuant to [section 13519.](#) The trial court found that [California Constitution article XIII B, section 6](#) required the state to reimburse the County for domestic violence training because the County's needs and priorities might be detrimentally affected when the state took away two hours of training by mandating that two specific hours of training occur. The trial court remanded the proceedings to the Commission to determine the amount of costs actually incurred by the County. We reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

[Article XIII B, section 6 of the California Constitution](#) provides: "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 program or increased level of service...." ([Cal. Const., art. XIII B, § 6.](#)) The Commission is charged with hearing and deciding local agency claims of entitlement to reimbursement under [article XIII B, section 6.](#) ([Gov.Code, § 17551](#), subd. (a).) Pursuit of such a claim is the exclusive remedy for this purpose ([Gov.Code, § 17552](#)), but the Commission's decisions are subject to review by administrative mandamus, under [Code of Civil Procedure section 1094.5.](#) ([Gov.Code, § 17559](#), subd. (b).) A "test claim" is "the first claim, ****423** including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." ([Gov.Code, § 17521](#); see also [Kinlaw v. State of California](#) (1991) 54 Cal.3d 326, 328-329, 331-333, 285 Cal.Rptr. 66, 814 P.2d 1308.)

In 1995, Penal Code [section 13519](#), subdivision (e) was amended to provide: "(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government." [\[FN2\]](#)

[FN2.](#) The currently enacted version of this provision is found at [Penal Code section 13519](#), subdivision (g), and reads, "Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities." (Stats.1998, ch. 701, designated the paragraph following subd. (a) as subd. (b) and redesignated the remaining subdivisions accordingly; in redesignated subd. (c), inserted par. (5), listing the signs of domestic violence as an instruction topic, and redesignated pars. (5) to (16) as pars. (6) to (17).)

***1180** [Penal Code section 13510](#), [\[FN3\]](#) et seq. requires the State Commission on Peace Officer Standards and Training (POST) to promulgate regulations establishing minimum state standards relating to physical, mental, and moral fitness, and minimum training standards for law enforcement officers. Compliance with POST's requirements is voluntary. ([Pen.Code, § § 13510](#) et seq.) POST has a certification program for peace officers specified in [Sections 13510](#) and [13522](#) and for the California Highway Patrol. ([Pen.Code, § § 13510.1](#), subds.(a)-

(c); [13510.3](#).)

[FN3.](#) [Penal Code section 13510](#), subdivision (a), provides in relevant part: "For the purpose of raising the level of competence of local law enforcement officers, [POST] shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office...."

On or about December 26, 1996, the County filed a "test claim" [\[FN4\]](#) pursuant to [Government Code section 17522](#) with the Commission. [\[FN5\]](#) The test claim alleged that ****424** neither local police officers nor their agencies were given any choice with respect to compliance with [section 13519](#). However, in order to implement the training, the County was required to redirect its officers from their normal work in order to attend the two-hour domestic violence training. The County alleged this substitution of the work agenda of the state for that of the local government violated [California Constitution article XIII B, section 6](#). Furthermore, the County pointed to language in Penal Code section ***1181** [13519](#), subdivision (e), providing that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities."

[FN4.](#) The test claim also challenged the incident reporting requirements of [Penal Code section 13730](#), which imposed a new program upon local law enforcement agencies to include in the domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence responses to the same address. The County did not contest the Commission's outcome relating to this portion of the test claim, and therefore this issue is not before us on appeal.

[FN5](#). In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of [section 6](#). (See [Gov.Code, § § 17500](#) et seq.) The local agency files a test claim with the Commission, which holds a public hearing and determines whether the statute mandates a new program or increased level of service. ([Gov.Code, § § 17521, 17551, 17555](#).) If the Commission finds that a claim is reimbursable, it then determines the amount of reimbursement. ([Gov.Code, § 17557](#).) The local agency then follows statutory procedures to obtain reimbursement. (See [Gov.Code, § § 17558](#) et seq.) Where the Commission finds no reimbursable mandate, the local agency can challenge this finding by administrative mandate proceedings under [Code of Civil Procedure section 1094.5](#). (See [Gov.Code, § 17552](#) [these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by [Section 6](#)...."].)

The test claim alleged that although POST bore the cost of producing two-hour telecourses on domestic violence, POST did not provide for any local law enforcement salary reimbursement for attendance at any type of POST-certified training, including the state-mandated costs for domestic violence training. Adherence to POST standards is voluntary by local law enforcement agencies, but POST requires a minimum of 24 hours of training every two years, to be chosen from a menu of available courses. POST does not dictate the courses that must be taken. POST courses include training in, among other things: interviewing techniques for detectives, defensive weapons, CPR, conflict resolution, bicycle patrol, ritual crime and hate group offenders, vehicle pullover and approach, confessions, courtroom demeanor, electronic vehicle recovery systems, vehicle theft investigation, and cultural awareness.

The POST program gives local law enforcement agencies flexibility in choosing training programs to meet their differing needs. In addition to domestic violence training, certain other programs are legislatively mandated: dealing with the developmentally disabled/mentally ill training (implemented July 1992), high speed vehicle pursuits (implemented November 1994), first aid/CPR (a 21-hour initial course, with a 12-hour refresher course

every three years); missing persons (implemented January 1989), racial and cultural diversity (implemented August 1983), sexual harassment (implemented November 1994), and sudden infant death syndrome (implemented July 1990). The time requirements for these other required courses vary. Some elective courses require 40 hours to complete.

However, the County alleged because there were no existing resources available for the domestic violence training, the annual training costs of the County were increased as a result of [section 13519](#). The County (Sheriff's Department) incurred costs of \$170,351.45 for domestic violence training for the fiscal year 1996-1997.

In support of its test claim, the County submitted legislative materials relating to [section 13519](#). These included: A July 5, 1995 memorandum in which the Assembly Committee on Appropriations stated that Senate Bill No. 132, proposing the changes ****425** to 13519, understood the "training requirement could have significant costs to local law enforcement in terms of expense and public safety, as most departments will be forced to backfill for offices while the officers are being trained or will have to forego the backfilling and have ***1182** fewer offices on patrol. Any monetary costs incurred by local law enforcement for the officer backfilling would be state-reimbursable." The Committee noted that, "Although this bill states that the costs of the additional domestic violence training be absorbed by POST within existing resources, the reality is that this bill would create additional non-absorbable costs to POST since POST will be unable to exclude one type of training in favor of the domestic violence training, and instead will have to add this training to their current curriculum. The current curriculum of POST training is just as important to the maintaining of public safety as is the additional domestic violence training."

In addition, the Department of Finance recognized the fiscal impact of [section 13519](#) on local law enforcement agencies, and opposed the adoption of Senate Bill No. 132. Diane M. Cummins, Deputy Director of the State Department of Finance, wrote to Senator Diane Watson on April 20, 1995, that, "This bill also specifies that training required pursuant to this measure 'shall be funded from existing resources', as specified. In so specifying, this bill would also require law enforcement agencies to modify existing training programs by increasing training requirements. Finance believes this bill contains a local mandate without providing necessary

funding, thereby being in conflict with the California Constitution, which requires the state to fund local mandate costs. Although there is no specific information available regarding the level of additional costs which would be imposed on law enforcement agencies, the Department of Finance is opposed to legislation which would result in additional General Fund expenditures, given the State's ongoing fiscal constraints." The Department of Finance recognized that, "Adding mandatory domestic violence training requirement would result in an additional unknown cost for specified state and local law enforcement agencies...."

Furthermore, Gretchen Fretter, Chair of the California Academy Directors' Association (an organization of training center directors and police academy managers throughout the state) wrote Senator Watson on March 9, 1995, to express the Association's concerns with Senate Bill No. 132. Fretter's analysis indicated that the mandate would incur a \$300,000 price tag for each training cycle. The California State Sheriffs' Association also wrote to express concerns about Senate Bill No. 132, including that POST estimated the domestic violence training would add costs to local agencies of at least \$750,000 per year. Glen Fine, the Deputy Executive Director of POST, on July 11, 1997, wrote to the Department of Finance to inform it that POST understood that the author of Senate Bill No. 132 was aware of POST's training requirements of 24 hours every two years, and it was "the author's intent ... that domestic violence update training become a statutorily required priority for inclusion within this 24 hours of training every two years."

***1183** POST issued a bulletin in February 1996 advising local law enforcement agencies of the new domestic violence training requirement.

The Department of Finance contended that the legislature intended the domestic violence continuing education and training to be funded from existing resources. The Department also contended that POST, which was charged with developing training ****426** standards for local law enforcement agencies, provided over \$21 million in existing state funds for domestic violence training. POST pointed out that the drafter of the statute recognized the 24 hours of continuing education every two years requirement, and intended the domestic violence training to be a priority to be included within this 24-hour requirement.

At the hearing before the Commission on the test

claim, representatives of the County testified that POST refused to pay for the programs, putting the burdens on local governments, and POST itself had estimated the annual cost of the program at \$750,000. A representative of the Sheriff's Department (Captain Dennis Wilson) testified that of the 24 hours required, any combination of courses could be used to meet the requirement. However, inclusion of the domestic violence training would take away two of those hours of training, resulting in only 22 hours. The Sheriff's Department would conduct domestic violence training even in the absence of the mandate; indeed; the Sheriff's Department actually conducted about 72 hours of training per officer per year. There was no funding for any of this training. The Sheriff's Department has 8,200 sworn officers, and two hours of training per officer adds up to 16,400 hours, which translates to 10 full-time officers for a year. Without funding for the domestic violence training, the Sheriff's Department therefore would lose the time equivalent of 10 officers for a year. Taking officers off the street impacts upon crime.

Martha Zavala testified on behalf of the County that the domestic violence training could not merely be subsumed within the 24 hours already required. With the training mandates already required by POST which exceed the 24-hour minimum, adding the domestic violence training only further exceeds the minimum 24 hours. There is no room to carve it out. Meeting POST requirements is not really an option. Thus, both the Sheriff's Department and the County agree they are seeking reimbursement of the costs of the training and the cost of replacing the officers on the street while in training.

A representative of POST testified that what POST provides in reimbursement to local law enforcement agencies is a small percentage of the real costs incurred. Where the training involved is through a telecourse, POST provides no reimbursement. There has been no increase in POST's budget since the amendment to [section 13519](#). About 30 of the courses provided by POST are mandated training.

***1184** A representative of the Department of Finance testified that the Department believed [Penal Code section 13519](#) did not create state-mandated reimbursable program because the legislation indicated it was the Legislature's intent not increase the training costs of local government, and the training could be fit within the existing 24-hour requirements.

The Commission's staff prepared an analysis in

advance of the hearing which found against the County. The Staff Analysis pointed out that [section 13519](#) was originally added by chapter 1609, Statutes of 1984. [\[FN6\]](#) Originally, the statute required ****427** that POST develop and implement a basic course of instruction for the training of law enforcement officers in the handling of domestic violence complaints, with local law enforcement agencies encouraged, but not required, to provide updates. These provisions of the 1984 version were the subject of a test claim filed by the City of Pasadena in 1990. That claim was denied because the original statute did not require local agencies to implement or pay for a domestic violence training program, did not increase the minimum basic training course hours or advanced officer training hours, and did not require local agencies to provide domestic violence training pursuant to the POST skills and knowledge standards.

[FN6.](#) The history of [section 13519](#) is as follows: Added by Statutes 1984, chapter 1609, section 2. Amended by Statutes 1985, chapter 281, section 1, effective July 26, 1985; Statutes 1989, chapter 850, section 3; Statutes 1991, chapter 912 (Sen. Bill No. 421), section 1; Statutes 1993, chapter 1098 (Assem. Bill No. 1268), section 8; *Statutes 1995, chapter 965 (Sen. Bill No. 132)*, section 1; Statutes 1998, chapter 606 (Sen. Bill No.1880), section 13; Statutes 1998, chapter 701 (Assem. Bill No. 2172), section 1; Statutes 1999, chapter 659 (Sen. Bill No. 355), section 4. The 1995 amendment, at issue here, rewrote subdivision (e), which prior to amendment read: "(e) Forty thousand dollars (\$40,000) is appropriated from the Peace Officers Training Fund [POST] in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts."

Legally, the Staff Analysis pointed out that in order for a statute to impose a reimbursable state mandated program, the statutory language must (1) direct or obligate an activity or task upon local government entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. (See, e.g., [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The Staff Analysis concluded that

[Penal Code section 13519](#) did impose a new activity or program upon local law enforcement agencies. However, because the language of the statute requiring that the instruction be funded from existing resources, it was an open question whether the program imposed *mandated* costs. Because POST's minimum requirements remained at 24 hours before and after enactment of [section 13519](#), there were no increased training hours and costs associated with the domestic violence training course. Instead, the course should be accommodated or absorbed by ***1185** local law enforcement agencies within their existing resources available for training. Thus, the Staff Analysis recommended denial of the test claim.

After the public hearings were held, the Commission adopted the findings of the Staff Analysis. The Commission issued its own statement of decision which substantially adopted the findings of the Staff Analysis.

Subsequently, the County filed a petition for writ of mandate with the trial court seeking vacation of the Commission's decision. The County argued that the domestic violence training constituted a state-mandated reimbursable program because it (1) was mandatory, while the POST certification training was optional; and (2) the only way local agencies could avoid the costs of the new program would be to redirect their efforts from the training they were already providing as part of POST training, thereby losing flexibility to design programs to suit their own needs.

The Commission argued that the County's focus on "redirected" manpower costs was misplaced. Instead, the focus should be on whether the local law enforcement agencies actually experience increased expenditure of their tax revenues. (See, e.g., [County of Sonoma v. Commission on State Mandates](#) (2000) 84 Cal.App.4th 1264, 1283, 101 Cal.Rptr.2d 784.) In [County of Sonoma](#), the court stated that [California Constitution article XIII B, section 6](#) was designed to prevent the state from forcing programs on local governments, and such a forced program is one which results in "increased actual expenditures ****428** of limited tax proceeds that are counted against the local government's spending limit. [Section 6](#), located within a measure aimed at limiting expenditures, is expressly concerned with 'costs' incurred by local governments as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas." (*Id.* at p. 1284, 101 Cal.Rptr.2d 784.) Because [section 13519](#) did not require the County to incur "actual

increased costs" because the domestic violence training could be subsumed within the 24-hour POST training requirement, no state reimbursement was required.

The Commission also argued the state had not required the County to incur increased training costs for salaries of officers to receive the two-hour training. POST's requirements did not change as a result of [section 13519](#), and indeed, shortly after the enactment of [section 13519](#), POST forwarded a bulletin to local law enforcement agencies suggesting they include domestic violence training within the 24-hour continuing training requirement.

The trial court heard argument, after which the trial court adopted its tentative statement of decision in which it noted that, "Although it may be reasonable in some or even most cases for a deputy to eliminate an *1186 unrequired two-hour elective in favor of the required domestic violence instruction, what about cases where the County's needs and priorities would be affected detrimentally, if two hours of electives were taken away? At what point would additional mandated courses result in increased costs? [¶] The record also shows that, for some deputies, other state-required training already amounts to 24 hours or more per two-year period. For these deputies, the two hours of mandated domestic violence training cannot be accommodated by giving up other training but must be added on, for added cost. It appears that, if domestic violence instruction is to be funded from existing resources on a deputy-by-deputy basis, the County clearly does incur increased costs." The trial court granted the petition, and remanded the matter for consideration of the exact amount of increased costs.

DISCUSSION

I. STANDARD OF REVIEW.

[1][2][3] The determination whether the statute here at issue established a mandate under [California Constitution article XIII B, section 6](#), is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Under [Government Code section 17559](#), [FN7] administrative mandamus is the exclusive means to challenge a decision of the Commission on a subvention claim. (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980, 64 Cal.Rptr.2d 270.) "[Government Code section 17559](#) governs the proceeding below and requires that the trial court review the decision of the Commission under the

substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal **429 conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)

[FN7. Government Code section 17559](#), subd. (b), provides: "A claimant or the state may commence a proceeding in accordance with the provisions of [Section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing."

***1187 II. SECTION 13519'S IMPOSITION OF A DOMESTIC VIOLENCE TRAINING COURT IS NOT A STATE-MANDATED PROGRAM WITHIN THE MEANING OF CONSTITUTION ARTICLE XIII B, SECTION 6 BECAUSE IT DOES NOT CONSTITUTE AN "INCREASED LEVEL OF SERVICE."**

[4] The Commission essentially makes two arguments. First, it contends that the County did not incur "increased costs." Reimbursement to the County under [Constitution article XIII B, section 6](#) is not required unless there is a showing of actual increased costs mandated by the state. (See, e.g., *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at pp. 54-55, 233 Cal.Rptr. 38, 729 P.2d 202; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66-67, 266 Cal.Rptr. 139, 785 P.2d 522.) In *City of Sacramento*, the court explained that the statutory concept of "costs mandated by the state" and the constitutional concept of [article XIII B, section 6](#), are identical. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 67, fn. 11, 266 Cal.Rptr. 139, 785 P.2d 522.) Because of this limited, rather than broad definition, of "costs mandated by the state," [California Constitution article XIII B, section 6](#) does not provide reimbursement for every single increased cost. Thus, the trial court's finding that reimbursement was required where a

statute results in a "redirection of local effort" or a "detrimental change in a local agency's needs and priorities" is not supported by the law. Rather, it constitutes an inappropriate injection of an equitable standard into the analysis.

Secondly, the Commission argues that no "mandate" exists. To the contrary, substantial evidence supports its finding that [section 13519](#) does not result in *increased* costs because nothing in the statute requires the County, or any other local law enforcement agency, to incur actual increased costs. The total number of hours required (the 24 minimum hours of POST training) did not increase because of the domestic violence training; rather, POST still requires 24 hours and in fact after the passage of [section 13519](#), POST forwarded a bulletin to law enforcement agencies recommending that they include domestic violence training within the 24 hour continuing professional training requirement. Because the POST standards are voluntary, if a local law enforcement agency adds two hours of domestic violence training to either the POST requirement or its own requirements, it is doing so at its own discretion.

In response, the County points out that the Commission's conclusion is based upon the erroneous premise that local law enforcement agencies could escape increased costs simply by dropping two hours of their existing POST training and substituting the new domestic violence training. However, the evidence in the legislative history indicates that this was not the intent of the legislature when it was considering [section 13519](#), nor was it the position of *1188 the Department of Finance. The County also contends that local law enforcement agencies incur costs when they sacrifice their existing training programs for the new domestic violence training. Although POST does not dictate those courses for which a local law enforcement agency must offer training and POST does pay for much of the training material, most of the cost of POST training is borne by the local law enforcement agencies in the form of personnel costs while deputies spend 24 hours of work time receiving training. **430 Furthermore, if a mere legislative directive to fund a new program with existing resources would let the state off the hook for reimbursement, then the constitutional rule of mandate reimbursement would be a nullity: any new state mandate can be funded by canceling other services. Because [California Constitution article XIII B, section 6](#) was designed to prevent the elimination of the fiscal freedom of local governmental agencies to expend their limited available resources without

being straightjacketed by state mandated programs, the Commission's "within existing resources" rule would circumvent the purposes of [article XIII B, section 6](#).

A. The Purposes of [California Constitution Article XIII B, Section 6](#) Guide Our Analysis.

[5] In 1978, the voters approved Proposition 13, which added article XIII A to the California Constitution. Article XIII A "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" ([County of Fresno v. State of California](#) (1991) 53 Cal.3d 482, 486, 280 Cal.Rptr. 92, 808 P.2d 235.) In 1979, Proposition 4 added article XIII B to the Constitution, which imposed a complementary limit on governmental spending. ([San Francisco Taxpayers Assn. v. Board of Supervisors](#) (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) These two constitutional provisions "work in tandem, together restricting California government's power both to levy and to spend for public purposes." ([City of Sacramento v. State of California](#), *supra*, 50 Cal.3d at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.) Their goal is to protect citizens from excessive taxation and government spending. ([County of Los Angeles v. State of California](#), *supra*, 43 Cal.3d at p. 61, 233 Cal.Rptr. 38, 729 P.2d 202.)

[6] [California Constitution article XIII B, section 6](#), provides in relevant part: "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 program or increased level of service." [Article XIII B, section 6](#), prevents 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 of articles XIII A and XIII B. ([County of Fresno v. State of California](#), *supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) [Section 6](#) thus requires the state "to pay for any new *1189 governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" ([Hayes v. Commission on State Mandates](#) (1992) 11 Cal.App.4th 1564, 1577, 15 Cal.Rptr.2d 547.)

[7][8][9][10][11][12][13] State mandate jurisprudence has established that in general, local agencies are not entitled to reimbursement of all

increased costs mandated by state law, but only those resulting from a "new" program or an "increased level of service" imposed upon them by the state. (*Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) A "program" is defined as a program which carries out the "governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) A program is "new" if the local governmental entity had not previously been required to **431 institute it. (*City of San Jose v. State of California, supra*, 45 Cal.App.4th at p. 1812, 53 Cal.Rptr.2d 521.) State mandates are requirements imposed on local governments by legislation or executive orders. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 50, 233 Cal.Rptr. 38, 729 P.2d 202.) Since the purpose of Constitution article XIII B, section 6 is to avoid governmental programs from being forced on localities by the state, programs which are not unique to the government do not qualify; the programs must involve the provision of governmental services. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) Further, in order for a state mandate to be found, the local governmental entity must be required to expend the proceeds of its tax revenues. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra*, 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Lastly, there must be compulsion to expend revenue. (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 780, 783, 200 Cal.Rptr. 642 [revisions to Code of Civil Procedure required entities exercising the power of eminent domain to compensate businesses for lost goodwill did not create state mandate, because the power of eminent domain was discretionary, and need not be exercised at all]; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) In *Lucia Mar*, the court explained Article XIII B, section 6, "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIII B because the programs are not 'new.'" (*Lucia Mar Unified School District v. Honig, supra*, 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

However, in spite of all of the above, "increased level of service" is not defined in Constitution Article XIII B, section 6 or in the ballot materials. *1190(*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449.) Furthermore, "Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate." (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197, 75 Cal.Rptr.2d 754.)

In *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802, 53 Cal.Rptr.2d 521, Government Code Section 29550 authorized counties to charge cities and other local entities for costs of booking into county jails persons who had been arrested by employees of the cities and other entities. (*Id.* at p. 1806, 53 Cal.Rptr.2d 521.) The State argued the measure merely reallocated booking costs, no shifting from state to local entities, therefore not within Constitution article XIII B, section 6. (*Id.* at p. 1806, 53 Cal.Rptr.2d 521.) The City contended counties function as agents of the state, charged with enforcement of state's criminal laws; detaining and booking integral part of this process. (*Id.* at p. 1808, 53 Cal.Rptr.2d 521.) The Commission found maintenance of jails and detention of prisoners, had always been a local matter, and cities and counties were both forms of local government; therefore, there was no shift in costs between *state* and local entities.

Furthermore, the terms of Government Code section 29550 were discretionary, not mandatory. (*City of San Jose v. State of California, supra*, 45 Cal.App.4th at pp. 1808-1809, 53 Cal.Rptr.2d 521.) *City of San Jose* found no cost had been improperly transferred to the local government **432 entities because the cost of capture, detention and housing of persons charged with crimes had traditionally been borne by the counties. (*Id.* at p. 1813, 53 Cal.Rptr.2d 521.) *City of San Jose* rejected the cities' argument that the county was acting as agent of the state because it was "not supported by recent case authority, nor does it square with definitions particular to subvention analysis." (*Id.* at p. 1814, 53 Cal.Rptr.2d 521.) California Constitution article XIII B treated cities and counties alike; Government Code section 17514 defines "costs mandated by the state" to mean any increased costs that a "local agency" is required to incur. Because both cities and counties were to be treated alike for purposes of subvention analysis, nothing in Article XIII B, section 6 prohibits the

shifting of costs between local government entities.
(*Id.* at p. 1815, 53 Cal.Rptr.2d 521.)

In *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, Labor Code sections 4453, 4453.1 and 4460, increased the maximum weekly wage upon which temporary and permanent disability indemnity was computed from \$231 to \$262.50 per week. In addition, Labor Code section 4702 increased certain death benefits from \$55,000 to \$75,000. The trial court held that because the changes did not exceed costs of living changes, they did not create an "increased level of service." (*Id.* at p. 52, 233 Cal.Rptr. 38, 729 P.2d 202.) The County argued the terms of Constitution article XIII B, section 6, do not contain an exception for increased costs which do not exceed the inflation rate. (*Id.* at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) The County relied on certain repealed Revenue and Taxation Code definitions *1191 which had equated any program which imposed "additional costs" as being within the constitutional provision of "increased level of service." (*Id.* at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) *County of Los Angeles* rejected this interpretation. "If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,' which, in turn, would be defined as 'additional costs.'" (*Id.* at p. 55, 233 Cal.Rptr. 38, 729 P.2d 202.) An examination of the language of California Constitution article XIII B, section 6 shows that "by itself, the term 'higher level of service' is meaningless." Rather, it must be read in conjunction with the phrase "new program." "Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.'" By "program," the voters meant "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, imposed unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The ballot materials provided that article XIII B, section 6 would "not allow the state government to force programs on local governments without the state paying for them." (*Id.* at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) "Laws of general application are not passed by the Legislature to 'force' programs on localities." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) In light of this, "[t]he language of section 6 is

far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs.... If the electorate had intended **433 such a far-reaching construction of section 6, the language would have explicitly indicated that the word 'program' was being used in such a unique fashion." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) Therefore, there was no need to pay for increase in worker's compensation, because it is not a program administered by local agencies to provide service to the general public. Local government entities are indistinguishable in this respect from private employers. (*Id.* at pp. 57-58, 233 Cal.Rptr. 38, 729 P.2d 202.)

In *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, chapter 2 of Statutes of 1978 extended mandatory coverage under the state's unemployment insurance laws to include state and local governments and nonprofit organizations. *City of Sacramento* held there was no obligation on the part of the state to provide funds because there was no "unique" obligation imposed upon local governments, nor was there any requirement of new or increased governmental services. (*Id.* at p. 57, 266 Cal.Rptr. 139, 785 P.2d 522.) As the court stated, the measure was adopted to conform California's system to federal laws. (*Id.* at p. 58, 266 Cal.Rptr. 139, 785 P.2d 522.) Because the measure required local governments to provide unemployment benefits to their own employees, the state had not compelled provision of a new or increased level of service to the public at the local level. Rather, it had merely required local government to provide the same benefits as private *1192 employers. (*Id.* at p. 67, 266 Cal.Rptr. 139, 785 P.2d 522.) The purpose of section 6 was to avoid governmental programs from being forced on localities by the state: Therefore, programs which are not unique to the government do not qualify. (*Ibid.*) The benefits at issue here have nothing to do with the provision of governmental services, and are therefore not within the scope of article XIII B, section 6. (*Id.* at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.)

In *Lucia Mar Unified School District v. Honig*, *supra*, 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318, Education Code section 59300, required school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped. *Lucia Mar* held section 59300 constituted a "new" program of higher level of service because cost of program had been shifted

from the state to a local entity. "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate [section 6 of article XIII B](#) because the programs are not 'new.' " (*Id.* at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

On the other hand, in [County of San Diego v. State of California](#), *supra*, 15 Cal.4th 68, 61 Cal.Rptr.2d 134, 931 P.2d 312, pursuant to 1982 legislation, the state withdrew from counties Medi-Cal funding for medically indigent persons (MIP's). (*Id.* at pp. 79-80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) To offset this change in coverage, the state set up an account as a mechanism to transfer state funds to counties to pay for Medi-Cal expenses, and sufficient funds had been available in this account to enable the state to fully fund San Diego County's Medi-Cal costs. (*Id.* at p. 80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) However, in fiscal year 1990-1991, insufficient funds were available. (*Ibid.*) The state argued that no mandate for reimbursement existed because the counties had always borne the responsibility of paying for indigent medical care pursuant to [Welfare & Institutions Code section 17000](#). (*Id.* at pp. 91-92, 61 Cal.Rptr.2d 134, 931 P.2d 312.) In finding reimbursement was ****434** mandated, the Supreme Court found that at the time [article XIII B, section 6](#) was enacted, the state was fully funding Medi-Cal for MIP's and the County bore no responsibility for those costs. (*Id.* at p. 93, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Thus, in enacting Medi-Cal, the Legislature had shifted the cost of indigent medical care from the counties to the state. (*Id.* at pp. 96-97, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Given this background, the Legislature excluded MIP's from Medi-Cal knowing full well that it would trigger the counties' obligation to pay for medical care as providers of last resort. (*Id.* at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Therefore, the 1982 legislation "mandated a " 'new program' " on counties by 'compelling them to accept financial responsibility in whole or in part for a program,' i.e., medical care for adult MIP's, 'which was funded entirely by the state before the advent of [article XIII B](#).'" ([County of San Diego v. State of California](#), *supra*, 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312, citing, [Lucia Mar Unified School District v. Honig](#), *supra*, 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.) Otherwise, " 'County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further....' " ([County of San Diego v. State of California](#), *supra*, 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

***1193** The Commission relies heavily on [County of Sonoma v. Commission on State Mandates](#), *supra*, 84 Cal.App.4th 1264, 101 Cal.Rptr.2d 784. In [County of Sonoma](#), the challenged legislation added [section 97.03 to the Revenue and Taxation Code](#), and reduced the amount of property tax revenue to be allocated to local government pursuant to a formula, allocating an equal portion to a "Educational Revenue Augmentation Fund (ERAF)" for distribution to school districts. (*Id.* at pp. 1269-1270, 1275, 101 Cal.Rptr.2d 784.) The net effect of the legislation was to decrease counties' tax revenues, although school revenues remained stable, and satisfied the constitutional necessity of maintaining a minimum level of funding for schools pursuant to California Constitution article XIV, section 8. (*Id.* at p. 1276, 101 Cal.Rptr.2d 784.) In [County of Sonoma](#), the County argued that the reallocation of tax revenues constituted a state-mandated cost of a new program. (*Id.* at p. 1276, 101 Cal.Rptr.2d 784.) The court held that [section 6](#) subvention was limited to "increases in actual costs." Because none of the County's tax revenues were expended, the legislation did not come within [section 6](#). "Proposition 4 [the initiative enacting [article XIII B](#)] was aimed at controlling and capping government spending, not curbing changes in revenue allocations. [Section 6](#) is an obvious [complement] to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit. [Section 6](#), located within a measure aimed at limiting expenditures, is expressly concerned when 'costs' incurred by local government as a result of state-mandated programs, particularly with the costs of compliance with a new program *restrict local spending in other areas*." (*Id.* at pp. 1283-1284, 101 Cal.Rptr.2d 784 (emphasis added).)

[County of Sonoma](#) discerned a further requirement of [Constitution article XIII B, section 6](#): that the costs incurred must involve programs previously funded exclusively by the state. In imposing this limitation, [County of Sonoma](#) relied on language in ****435**[County of San Diego v. State of California](#), *supra*, 15 Cal.4th 68, 61 Cal.Rptr. 2d 134, 931 P.2d 312 that "[section 6](#) prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of [section 6](#)." ([County of San Diego v. State of California](#), *supra*, 15 Cal.4th 68 at p. 99,

[fn. 20, 61 Cal.Rptr.2d 134, 931 P.2d 312.](#)) *County of Sonoma* determined that because the statute at issue only involved a reallocation of funds between entities already jointly responsible for providing a service (education), no state mandated reimbursable program existed. (*County of Sonoma v. Commission on State Mandates, supra*, 84 Cal.App.4th at p. 1289, 101 Cal.Rptr.2d 784.)

[\[14\]\[15\]\[16\]](#) Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for [*1194](#) purposes of [Constitution article XIII B, section 6](#), does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

We agree that POST certification is, for all practical purposes, not a "voluntary" program and therefore the County must, in order to comply with [section 13519](#), add domestic violence training to its curriculum. POST training and certification is ongoing and extensive, and local law enforcement agencies may chose from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Furthermore, the state has not shifted from itself the cost of a program previously administered and funded by the state. Instead, the state is requiring certain courses to be placed within an already existing framework of training. This loss of "flexibility" does not, in and of itself, require the County to expend funds that previously had been expended on the POST program by the State. Instead, "[t]he purpose for which state subvention of funds was created, to protected local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play" by a directive that POST certified studies

include domestic violence training. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra*, 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Any increased costs are merely "incidental" to the cost of administering the POST certification.

[\[17\]\[18\]](#) While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state mandated reimbursable program, (*Carmel Valley Fire Protection District v. State of California (1987) 190 Cal.App.3d 521, 541, 234 Cal.Rptr. 795*), our interpretation is supported by the hortatory statutory language that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase ****436** the annual training costs of local government." Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. ***1195** Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [Penal Code section 13519](#).

DISPOSITION

The judgment of the trial court is reversed. The trial court is directed to enter a new and different judgment denying the County's petition for writ of mandate and reinstating the findings of the Commission.

We concur: [PERLUSS](#), P.J., and [WOODS](#), J.

2 Cal.Rptr.3d 419, 110 Cal.App.4th 1176, 3 Cal. Daily Op. Serv. 6658, 2003 Daily Journal D.A.R. 8347

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• [2003 WL 21957058](#) (Appellate Brief) Joinder by Real Party in Interest in Appellant Commission on State Mandate's Reply Brief (Mar. 14, 2003)Original

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H

Supreme Court of California
SAN DIEGO UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent,

v.

COMMISSION ON STATE MANDATES, Defendant and Appellant;
California Department of Finance, Real Party in Interest and Appellant.

No. S109125.

Aug. 2, 2004.

Background: School district petitioned for writ of administrative mandate to require the Commission on State Mandates to approve test claim for costs of mandatory and discretionary expulsion of students. The Superior Court, San Diego County, No. GIC737638, [Linda B. Quinn, J.](#), granted the petition. Commission and Department of Finance appealed. The Court of Appeal affirmed. Review was granted, superseding opinion of Court of Appeal.

Holdings: The Supreme Court, [George, C.J.](#), held that:

(1) all hearing costs incurred by district as result of mandatory actions related to expulsions for student's possession of firearm, at time relevant to this proceeding, constituted "higher level of service" within meaning of state constitutional provision, and thus were fully reimbursable, and

(2) hearing costs incurred by district as result of actions related to discretionary expulsions did not constitute "new program or higher level of service," and, in any event, did not trigger right to reimbursement, as costs of procedures exceeding federal due process requirements were de minimis.

Affirmed in part and reversed in part.

Opinion, [122 Cal.Rptr.2d 614](#), superseded.

West Headnotes

[\[1\] Schools 345](#)  [19\(1\)](#)

[345](#) Schools

[345II](#) Public Schools

[345II\(A\)](#) Establishment, School Lands and Funds, and Regulation in General

[345k16](#) School Funds

[345k19](#) Apportionment and Disposition

[345k19\(1\)](#) k. In General. [Most Cited](#)

[Cases](#)

All hearing costs incurred by school district as result of mandatory actions related to expulsions of students for possession of firearm, at time relevant to mandamus proceeding initiated by district, constituted state-mandated "higher level of service" within meaning of state constitutional provision providing for reimbursement of local government for costs of "new program or higher level of service" imposed on local government by statute or state regulation, and thus were fully reimbursable; providing public schooling clearly constituted governmental function, enhancing safety of those who attended such schools constituted service to public, and mandatory expulsion provision did not implement federal law or regulation then extant. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Educ.Code §§ 48915\(c, d\), 48918](#); [West's Ann.Cal.Educ.Code § 48915\(b\)](#) (1994).

See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 549.

[\[2\] Schools 345](#)  [19\(1\)](#)

[345](#) Schools

[345II](#) Public Schools

[345II\(A\)](#) Establishment, School Lands and Funds, and Regulation in General

[345k16](#) School Funds

[345k19](#) Apportionment and Disposition

[345k19\(1\)](#) k. In General. [Most Cited](#)

[Cases](#)

Hearing costs incurred by school district as result of actions related to discretionary expulsions did not constitute "new program or higher level of service," triggering right to reimbursement under state constitutional provision mandating reimbursement of local government for costs of "new program or higher level of service" imposed on local government by statute or state regulation, and, in any event, procedures related to discretionary expulsions were adopted to implement federal due process mandate, and thus were nonreimbursable, and costs exceeding

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federal requirements were de minimis, and so also nonreimbursable. [U.S.C.A. Const.Amend. 14](#); [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Educ.Code §§ 48915\(e\), 48918](#); [West's Ann.Cal.Educ.Code § 48915\(c\)](#) (1994); [West's Ann.Cal.Gov.Code §§ 17514, 17556\(c\), 17561\(a\)](#).

***467 *865 **590 [Paul M. Starkey](#), [Camille Shelton](#), Sacramento, and Katherine A. Tokarski for Defendant and Appellant.

[Bill Lockyer](#), Attorney General, [Manuel M. Medeiros](#), State Solicitor General, Pamela Smith-Steward, Chief Assistant Attorney General, [Andrea Lynn Hoch](#), Assistant Attorney General, Louis R. Mauro and Susan R. Oie, Deputy Attorneys General, for Real Party in Interest and Appellant.

[Jo Anne Sawyerknoll](#), Sacramento, [Tad Seth Parzen](#), [Jose A. Gonzales](#) and [Arthur M. Palkowitz](#), San Diego, for Plaintiff and Respondent.

Lozano Smith, Diana McDonough, San Rafael, [Harold M. Freiman](#), San Ramon, [Jan E. Tomskey](#), San Rafael, and [Gregory A. Floyd](#), Fresno, for California School Boards Association Education Legal Alliance as Amicus Curiae on behalf of Plaintiff and Respondent.

*866 [Steven M. Woodside](#), County Counsel (Sonoma) as Amicus Curiae on behalf of Plaintiff and Respondent.

**591 [GEORGE](#), C.J.

Article XIII B, section 6, of the California Constitution provides: “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 program or increased level of service....” ^{FN1} (Hereafter [article XIII B, section 6](#).)

^{FN1}. The provision continues: “except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶]”

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” ([Cal. Const., art. XIII B, § 6](#).)

Plaintiff San Diego Unified School District (District), like all other public school districts in the state, is, and was at the time relevant in this proceeding, governed by statutes that regulate the expulsion of students. ([Ed.Code, § 48900 et seq.](#)) Whenever an expulsion recommendation is made (and before a student may be expelled), the District is required by [Education Code section 48918](#) to afford the student a hearing with various procedural protections-including notice of the hearing and the right to representation by ***468 counsel, preparation of findings of fact, notices related to any expulsion and the right of appeal, and preparation of a hearing record. Providing these procedural protections requires the District to expend funds, for which the District asserts a right to reimbursement from the state pursuant to [article XIII B, section 6](#), and implementing legislation, [Government Code section 17500 et seq.](#)

We granted review to consider two questions: (1) Are the hearing costs incurred as a result of the *mandatory* actions related to expulsions that are compelled by [Education Code section 48915](#) fully reimbursable-or are those hearing costs reimbursable only to the extent such costs are attributable to hearing procedures that exceed the procedures required by federal law? (2) Are any hearing costs incurred in carrying out expulsions that are *discretionary* under [Education Code section 48915](#) reimbursable? After we granted review and filed our decision in [Department of Finance v. Commission on State Mandates \(Kern High School Dist.\)](#) (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203 ([Kern High School Dist.](#)), we added the following preliminary question to be addressed: Do the Education Code *867 statutes cited above establish a “new program” or “higher level of service” under [article XIII B, section 6](#)? Finally, we also asked the parties to brief the effect of the decision in [Kern High School Dist., supra](#), 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, on the present case.

We conclude that [Education Code section 48915](#), insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, con-

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stitutes a “higher level of service” under [article XIII B, section 6](#), and imposes a reimbursable state mandate for all resulting hearing costs—even those costs attributable to procedures required by federal law. In this respect, we shall affirm the judgment of the Court of Appeal.

We also conclude that no hearing costs incurred in carrying out those expulsions that are discretionary under [Education Code section 48915](#)—including costs related to hearing procedures claimed to exceed the requirements of federal law—are reimbursable. As we shall explain, to the extent that statute makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing procedures set forth in [Education Code section 48918](#) constitute a new program or higher level of service, we conclude that this statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated, for purposes of ruling upon a request for reimbursement, as part of the non-reimbursable underlying federal mandate and not as a state mandate. Accordingly, we shall reverse the judgment of the Court of Appeal insofar as it compels reimbursement**592 of any costs incurred pursuant to discretionary expulsions.

I

A. [Education Code sections 48918 and 48915](#)

We first describe the relevant provisions of two statutes—[Education Code sections 48918](#) and [48915](#)—pertaining to the expulsion of students from public schools.

[Education Code section 48918](#) specifies the right of a student to an expulsion hearing and sets forth procedures that a school district must *868 follow when conducting***469 such a hearing. (Stats.1990, ch. 1231, § 2, pp. 5136-5139.)^{FN2}

^{FN2}. For purposes of our present inquiry, [section 48918](#), at the time relevant here (mid-1993 through mid-1994) read essentially as it had for the prior decade, and as it

has in the ensuing decade. That provision first was enacted in 1975 (see Stats.1975, ch. 1253, § 4, pp. 3277-3278) as Education Code, former section 10608. (This enactment apparently was a response to the United States Supreme Court’s decision in [Goss v. Lopez \(1975\) 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725 \(Goss\)](#) [recognizing due process requirements applicable to public school students who are suspended for more than 10 days].) The statute was renumbered as Education Code, former section 48914 in 1976 (Stats.1976, ch. 1010, § 2, pp. 3589-3590) and was substantially augmented in 1977 (Stats.1977, ch. 965, § 24, pp. 2924-2926). After relatively minor amendments in 1978 and 1982, the section in 1983 was substantially restated, further augmented, and renumbered as [Education Code section 48918](#) (Stats.1983, ch. 498, § 91, p. 2118). Amendments adopted in 1984 and 1988 made relatively minor changes, and further similar modifications were made in 1990, reflecting the version of the statute here at issue. Subsequent amendments in 1995, 1996, 1998, and 1999 made further changes that are irrelevant to the issue presented in the case now before us.

In identifying the right to a hearing, subdivision (a) of this statute declares that a student is “entitled” to an expulsion hearing within 30 days after the school principal determines that the student has committed an act warranting expulsion.^{FN3} *In practical effect, this means that whenever a school principal makes such a determination and recommends to the school board that a student be expelled, an expulsion hearing is mandated.*^{FN4}

^{FN3}. The provision reads: “The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in [Section 48900...](#)” ([Ed.Code, § 48918](#), subd. (a). ([Subdivision \(b\) of § 48900](#) presently includes—as it did at the time relevant here—the offense of possession of a firearm.)

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FN4. Of course, if a student does not invoke his or her entitlement to such a hearing, and instead waives the right to such a hearing, the hearing need not be held.

him or her to an alternative education program housed at a separate school site. **FN6** (Compare this former provision with *current* [Ed.Code, § 48915](#), subs. (c) and (d).) **FN7**

In specifying the substantive and procedural requirements for such an expulsion hearing, [Education Code section 48918](#) sets forth rules and procedures, some of which, the parties agree, codify requirements of federal due process and some of which may exceed those requirements. **FN5** These rules and procedures govern, among other things, notice of a hearing and the right to representation by counsel, preparation of findings of fact, notices related to the expulsion and the right of appeal, and preparation of a hearing record. (See [§ 48918](#), subs. (a) through former subd. (j) (currently subd. (k).))

FN6. An earlier and similar, albeit broader, version of the provision-extending not only to possession of firearms but also to possession of explosives and certain knives-existed briefly and was effective for approximately two and one-half months in late 1993. That initial statute, former [section 48915](#), subdivision (b) (as amended Stats.1993, ch. 1255, § 2, pp. 7284-7285), which was effective only from October 11, 1993 through December 31, 1993, provided: “The principal or the superintendent of schools shall immediately suspend pursuant to Section 48911, and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds. The governing board shall expel that pupil or, as an alternative, refer that pupil to an alternative education program, whenever the principal or the superintendent of schools and the governing board confirm that: [¶] (1) The pupil was in knowing possession of the firearm, knife, or explosive. [¶] (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the school district. [¶] (3) There was no reasonable cause for the pupil to be in possession of the firearm, knife, or explosive.”

FN5. See [Goss, supra, 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725; Gonzales v. McEuen \(C.D.Cal.1977\) 435 F.Supp. 460, 466-467](#) (concluding that former [Education Code section 10608](#) [current [§ 48918](#)] met federal due process requirements pertaining to expulsions from public schools); 7 Witkin, Summary of California Law (9th ed.1988), Constitutional Law, § 549, p. 754 (noting that [Education Code section 48918](#) and related legislation were enacted in response to the decision in [Goss](#)).

As subsequently amended by Statutes 1993, chapter 1256, section 2, pages 7286-7287, effective January 1, 1994, [Education Code section 48915](#), former subdivision (b), read: “The principal or the superintendent of schools shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately

***869** The second statute at issue in this matter is [Education Code section 48915](#). Discrete subdivisions of this statute address circumstances in which a principal *must* recommend to the school board that a student be expelled, and circumstances in which a principal *may* recommend that a student be expelled.

First, there is what the parties characterize as the “mandatory expulsion provision,” [Education Code section 48915](#), former subdivision (b). As it read during the time relevant in this proceeding (mid-1993 ****470** through mid-1994), this subdivision (1) compelled a school principal to *immediately suspend* any ****593** student found to be in possession of a firearm at school or at a school activity off school grounds, and (2) mandated a *recommendation* to the school district governing board that the student be *expelled*. The provision further required the governing board, upon confirmation of the student's knowing possession of a firearm, either to expel the student or “refer”

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prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior, or senior high school or housed at the schoolsite attended by the pupil at the time the expulsion was recommended to the school board, whenever the principal or superintendent of schools and the governing board confirm the following: [¶] (1) The pupil was in knowing possession of the firearm. [¶] (2) An employee of the school district verifies the pupil's possession of the firearm.”

[FN7](#). The current subdivisions of [Education Code section 48915](#) set forth a list of mandatory expulsion conduct broader than that set forth in former subdivision (b), and require a school board both to *expel and refer* to other institutions all students found to have committed such conduct. The present subdivisions read: “(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: [¶] (1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. [¶] (2) Brandishing a knife at another person. [¶] (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with [Section 11053](#)) of Division 10 of the Health and Safety Code. [¶] (4) Committing or attempting to commit a sexual assault as defined in [subdivision \(n\) of Section 48900](#) or committing a sexual battery as defined in [subdivision \(n\) of Section 48900](#). [¶] (5) Possession of an explosive. [¶] (d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following condi-

tions: [¶] (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems. [¶] (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school. [¶] (3) Is not housed at the schoolsite attended by the pupil at the time of suspension.” (Stats.2001, ch. 116, § 1.)

*****471 *870** This provision, as it read at the time relevant here, did not mandate expulsion per se [FN8](#) but it *did* require immediate suspension followed by a mandatory expulsion recommendation (and it provided that a student found by the governing board to have possessed ****594** a firearm would be removed from the school site by limiting disposition to either expulsion or “referral” to an alternative school). Moreover, as noted above, whenever expulsion is recommended a student has a right to an expulsion hearing. Accordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing*. For convenience, we accept the parties' description of this aspect of [Education Code section 48915](#) as constituting a “mandatory expulsion provision.”

[FN8](#). As the Department of Finance observed in an August 22, 1994, communication to the Commission in this matter, “nothing in [[Education Code section 48915](#)] ... requires a district governing board or a county board of education to expel a pupil,” and even “unauthorized and knowing possession of a firearm, does not result in mandated expulsion. [Section 48915](#) subdivision (b) provides for the choice of the governing board to either expel the pupil in possession of a firearm, or refer the pupil to an alternative program of study....”

The second aspect of [Education Code section 48915](#) relevant here consists of what we shall call the “discretionary expulsion provision.” (*Id.*, former subd. (c), subsequently subd. (d), currently subd. (e).) During the period relevant in this proceeding (as well as currently), this subdivision of [Education Code section 48915](#) recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing school property or

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private property, using or selling illicit drugs, receiving stolen property, possessing tobacco or drug paraphernalia, or engaging in disruptive behavior). The former provision (like the current provision) further specified that the school district governing board “may” order a student expelled upon finding that the *871 student, while at school or at a school activity off school grounds, engaged in such conduct.^{FN9}

FN9. Education Code, section 48915, former subdivision (c) (as amended Stats.1992, ch. 909, § 3, p. 4226; amended and redesignated as former subd. (d) by Stats.1993, ch. 1255, § 2, pp. 7284-7285; further amended Stats.1993, ch. 1256, § 2, p. 7287, and Stats.1994, ch. 1198, § 7, p. 7271) provided, at the time relevant here: “Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board *may* order a pupil expelled upon finding that the pupil violated subdivision (f), (g), (h), (i), (j), (k), or (l) of Section 48900, or Section 48900.2 or 48900.3, and either of the following: [¶] (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct. [¶] (2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.” (Italics added.)

At the time relevant here, subdivisions (f) through (l) of section 48900 (as amended Stats.1992, ch. 909, § 1, pp. 4224-4225; Stats.1994, ch. 1198, § 5, pp. 7269-5270) provided: “A pupil shall *not* be suspended from school or recommended for expulsion *unless* the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has: [¶] ... [¶] (f) Caused or attempted to cause damage to school property or private property. [¶] (g) Stolen or attempted to steal school property or private property. [¶] (h) Possessed or used tobacco, or any products containing tobacco or nicotine products.... However, this section does not prohibit use or possession by a pupil of his or her own prescription products. [¶]

(i) Committed an obscene act or engaged in habitual profanity or vulgarity. [¶] (j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. [¶] (k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. [¶] (l) Knowingly received stolen school property or private property.” (Italics added.)

At the time relevant here, section 48900.2 (Stats.1992, ch. 909, § 2, p. 4225) provided: “In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.[¶] For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.”

Section 48900.3 (Stats.1994, ch. 1198, § 6, p. 7270), at the time relevant here, provided: “In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of [former] Section 33032.5 [current section 233].”

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In addition, section 48900.4 (Stats.1994, ch. 1017, § 1, p. 6196) provided, at the time relevant here: “In addition to the grounds specified in [Sections 48900](#) and [48900.2](#), a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment.”

(All of these current provisions-[sections 48915](#), subdivision (e), [48900](#), [48900.2](#), [48900.3](#), and [48900.4](#)-read today substantially the same as they did at the time relevant in the present case.)

*****472 *872 **595 B.** *Proceedings under [Government Code section 17500 et seq.](#)*

Procedures governing the constitutional requirement of reimbursement under [article XIII B, section 6](#), are set forth in [Government Code section 17500 et seq.](#) The Commission on State Mandates (Commission) ([Gov.Code, § 17525](#)) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. ([Gov.Code, § 17551](#).) [Government Code section 17561](#), subdivision (a), provides that the “state shall reimburse each ... school district for all ‘costs mandated by the state,’ as defined in [section 17514](#).” [Government Code section 17514](#), in turn, defines “costs mandated by the state” to mean, in relevant part, “any increased costs which a ... school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#).” Finally, [Government Code section 17556](#) sets forth circumstances in which there shall be no reimbursement, including, under subdivision (c), circum-

stances in which “[t]he statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or *****473** executive order mandates costs which exceed the mandate in that federal law or regulation.”

In March 1994, the District filed a “test claim” with the Commission, asserting entitlement to reimbursement for the costs of hearings provided with respect to both categories of cases described above-that is, those hearings triggered by mandatory expulsion recommendations, and those hearings resulting from discretionary expulsion recommendations. (See [Gov.Code, § 17521](#); [Kinlaw v. State of California \(1991\) 54 Cal.3d 326, 331-333, 285 Cal.Rptr. 66, 814 P.2d 1308.](#))^{FN10} The District sought reimbursement for costs incurred between July 1, 1993, and June 30, 1994, under statutes effective through the latter date.

[FN10.](#) As observed by amicus curiae California School Boards Association, a “test claim is like a class action-the Commission’s decision applies to all school districts in the state. If the district is successful, the Commission goes to the Legislature to fund the statewide costs of the mandate for that year and annually thereafter as long as the statute is in effect.”

In August 1998, after holding hearings on the District’s claim (as amended in April 1995, to reflect legislation that became effective in 1994), the Commission issued a “Corrected Statement of Decision” in which it determined that [Education Code section 48915](#)’s requirement of suspension and a ***873** mandatory recommendation of expulsion for firearm possession constituted a “new program or higher level of service,” and found that because costs related to some of the resulting hearing provisions set forth in [Education Code section 48918](#) (primarily various notice, right of inspection, and recording provisions) exceeded the requirements of federal due process, those additional hearing costs constituted reimbursable state-mandated costs.^{FN11} As to the vast majority of the remaining ****596** hearing procedures triggered by [Education Code section 48915](#)’s requirement of suspension and a mandatory recommendation of expulsion for firearm possession-for example, procedures governing such matters as the hearing itself and the board’s decision; a statement of facts and charges;

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notice of the right to representation by counsel; written findings; recording of the hearing; and the making of a record of the expulsion-the Commission found that those procedures were enacted to comply with federal due process requirements, and hence fell within the exception set forth in [Government Code section 17556](#), subdivision (c), and ***474 did not impose a reimbursable state mandate. The Commission further found that with respect to [Education Code section 48915](#)'s *discretionary* expulsions, there was no right to reimbursement for costs incurred in holding expulsion hearings, because such expulsions do not constitute a new program or higher level of service, and in any event such expulsions are not *mandated* by the state, but instead represent a choice by the principal and the school board.

FN11. The Commission concluded that the costs incurred in providing the following state-mandated procedures under [Education Code section 48918](#) exceeded federal due process requirements, and were reimbursable: (i) adoption of rules and regulations pertaining to pupil expulsions ([§ 48918](#), first par. & *passim*); (ii) inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the District, (b) a notice of the parents' obligation to notify a new school district, upon enrollment, of the pupil's expulsion, and (c) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing ([§ 48918](#), subd. (b)); (iii) allowing, upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing ([§ 48918](#), subd. (b)); (iv) sending of written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the parent to notify a new school district, upon enrollment, of the pupil's expulsion ([§ 48918](#), former subd. (i), currently subd. (j)); (v) maintenance of a record of each expulsion, including the cause thereof ([§ 48918](#), former subd. (j), currently subd. (k)); and (vi) the recording of expulsion orders and the causes thereof in the pupil's mandatory interim record (and, upon request, the forwarding of this record to any school in which the pupil subsequently enrolls) ([§](#)

[48918](#), former subd. (j), currently subd. (k)).

In October 1999, the District brought this proceeding for an administrative writ of mandate challenging the Commission's decision. The trial court issued a writ commanding the Commission to render a new decision finding (i) all costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations are reimbursable, and (ii) hearing costs associated with discretionary expulsions are reimbursable to the limited *874 extent that required hearing procedures exceed federal due process mandates. The Commission (defendant) and the Department of Finance (real party in interest, hereafter Department) appealed, and the Court of Appeal affirmed the judgment rendered by the trial court.

II

A. Costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations

1. "New program or higher level of service"?

We address first the issue that we asked the parties to brief: Does [Education Code section 48915](#), former subdivision (b) (current subds. (c) & (d)), which mandated suspension and an expulsion recommendation for those students who possess a firearm at school or at a school activity off school grounds, and which also required a school board, if it found the charge proved, either to expel or to "refer" such a student to an alternative educational program housed at a separate school site, constitute a "new program or higher level of service" under [article XIII B, section 6 of the state Constitution](#), and under [Government Code section 17514](#)?

We addressed the meaning of the Constitution's phrase "new program or higher level of service" in [County of Los Angeles v. State of California \(1987\)](#) 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202 ([County of Los Angeles](#)). That case concerned whether local governments are entitled to reimbursement for costs incurred in complying with legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide for their employees. We stated:

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“Looking at the language of [\[article XIII B, section 6\]](#) then, it seems clear that by itself the term ‘higher level of service’ is meaningless. It must be read in conjunction with the predecessor phrase ‘new program’ to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs.’ But the term ‘program’ itself is not defined in [article XIII B](#). What programs ****597** then did the electorate have in mind when [section 6](#) was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term- [(1)] programs that carry out the governmental function of providing services to the public, or [(2)] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents ****475** and entities in the state.” ([County of Los Angeles, supra, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.](#))

***875** We continued in [County of Los Angeles](#): “The concern which prompted the inclusion of [section 6](#) in [article XIII B](#) was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of [article XIII B](#) explained [section 6](#) to the voters: ‘Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.’ (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase ‘to force programs on local governments’ confirms that *the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.*” ([County of Los Angeles, supra, 43 Cal.3d 46, 56-57, 233 Cal.Rptr. 38, 729 P.2d 202.](#) italics added.)

It was clear in [County of Los Angeles, supra, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202.](#) that the

law at issue did not meet the second test for a “program or higher level of service”—it did not implement a state policy by imposing unique requirements upon local governments, but instead applied workers’ compensation contribution rules generally to all employers in the state. Nor, we held, did the law requiring local agencies to shoulder a general increase in workers’ compensation benefits amount to a reimbursable “program or higher level of service” under the first test described above. (*Id.*, at pp. 57-58, [233 Cal.Rptr. 38, 729 P.2d 202.](#)) The law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public.

We reaffirmed and applied the test set out in [County of Los Angeles, supra, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202.](#) in [Lucia Mar Unified School District v. Honig](#) (1988) 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318 (*Lucia Mar*). The state law at issue in *Lucia Mar* required local school districts to pay a portion of the cost of educating pupils in *state* schools for the severely handicapped—costs that the state previously had paid in full.

We determined that the contributions called for under the law were used to fund a “program” within both definitions of that term set forth in [County of Los Angeles, \(Lucia Mar, supra, 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.\)](#) We stated: “[T]he education of handicapped children is clearly a governmental function providing a service to the public, and the [state law] imposes requirements on school districts not imposed on all the states residents. Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are ***876** concerned, since at the time [the state law] became effective they were not required to contribute to the education of students from their districts at such schools. [] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying [section 6 of article XIII B](#).... [Section 6](#) was intended to preclude the state from shifting to local *****476** agencies the financial responsibility for providing public services in view of ... restrictions on the taxing and spending power of the local entities.” ([Lucia Mar, supra, 44 Cal.3d 830, 835-836, 244 Cal.Rptr. 677, 750 P.2d 318;](#) see also

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****598***County of San Diego v. State of California* (1997) 15 Cal.4th 68, 98, 61 Cal.Rptr.2d 134, 931 P.2d 312 [legislation excluding indigents from Medi-Cal coverage transferred obligation for such costs from state to counties, and constituted a reimbursable “new program or higher level of service”].)

We again applied the alternative tests set forth in *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*). In that case we considered whether a state law implementing federal “incentives” that encouraged states to extend unemployment insurance coverage to all public employees constituted a program or higher level of service under article XIII B, section 6. We concluded that it did not because, as in *County of Los Angeles*, (1) providing unemployment compensation protection to a city's own employees was not a service to the public; and (2) the statute did not apply uniquely to local governments—indeed, the same requirements previously had been applied to most employers, and extension of the requirement (by eliminating a prior exemption for local governments) merely placed local government employers on the same footing as most private employers. (*City of Sacramento, supra*, 50 Cal.3d at pp. 67-68, 266 Cal.Rptr. 139, 785 P.2d 522.)

Subsequently, the Court of Appeal in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754 (*City of Richmond*), following *County of Los Angeles, supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, and *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, concluded that requiring local governments to provide death benefits to local safety officers, under both the Public Employees Retirement System and the workers' compensation system, did not constitute a higher level of service to the public. The Court of Appeal arrived at that determination even though—as might also have been argued in *County of Los Angeles* and *City of Sacramento*—such benefits may “generate a higher quality of local safety officers” and thereby, in a general and indirect sense, provide the public with a “higher level of service” by its employees. (*City of Richmond, supra*, 64 Cal.App.4th 1190, 1195, 75 Cal.Rptr.2d 754.)

Viewed together, these cases (*County of Los Angeles,*

supra, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and ***877***City of Richmond, supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754) illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting “service to the public” under article XIII B, section 6, and Government Code section 17514.^{FN12}

FN12. Indeed, as the court in *City of Richmond, supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754, observed: “Increasing the cost of providing services cannot be equated with requiring an increased level of service under [article XIII B, section 6]. . . . A higher cost to the local government for compensating its employees is not the same as a higher cost of providing [an increased level of] services to the public.” (*Id.*, at p. 1196, 75 Cal.Rptr.2d 754; accord, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, 235 Cal.Rptr. 101 [temporary increase in PERS benefit to retired employees, resulting in higher contribution rate by local government, does not constitute a higher level of service to the public].)

*****477** By contrast, Courts of Appeal have found a reimbursable “higher level of service” concerning an existing “program” when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538, 234 Cal.Rptr. 795 (*Carmel Valley*), for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public, thereby satisfying the first alternative test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. Similarly, in ****599***Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449 (*Long Beach*), an executive order required school

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districts to take specific steps to measure and address racial segregation in local public schools. The appellate court held that this constituted a “higher level of service” to the extent the order’s requirements exceeded federal constitutional and case law requirements by mandating school districts to undertake defined remedial actions and measures that were merely advisory under prior governing law.

[1] The District and the Commission assert that the “mandatory” aspect of [Education Code section 48915](#), insofar as it compels suspension and mandates an expulsion recommendation for firearm possession (and thereafter restricts the board’s options to expulsion or referral to an off-site alternative school), carries out a governmental function of providing services to the public and hence constitutes an increased or higher level of service concerning an existing program under the first alternative test of [County of Los Angeles, supra](#), 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. They argue, in essence, that the present matter is more analogous to the latter cases *878 ([Carmel Valley, supra](#), 190 Cal.App.3d 521, 234 Cal.Rptr. 795, and [Long Beach, supra](#), 225 Cal.App.3d 155, 275 Cal.Rptr. 449)-both of which involved measures designed to increase the level of governmental service provided to the public-than to the former cases ([County of Los Angeles, supra](#), 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, [City of Sacramento, supra](#), 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and [City of Richmond, supra](#), 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754)-in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased. As we shall explain, we agree with the District and the Commission.

The statutory requirements here at issue-immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral)-reasonably are viewed as providing a “higher level of service” to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of Statutes of 1993, chapters 1255 (Assem. Bill No. 342 (1993-1994 Reg. Sess.) (Assembly Bill No. 342)) and 1256 (Senate Bill ***478 No. 1198 (1993-1994 Reg. Sess.) (Senate Bill No. 1198)); and (ii) the require-

ments were intended to provide an enhanced service to the public-safer schools for the vast majority of students (that is, those who are not expelled or referred to other school sites). In other words, the legislation was premised upon the idea that by removing potentially violent students from the general school population, the safety of those students who remain thereby is increased. (See, e.g., Stats.1993, ch. 1255, § 4, pp. 7285-7286 [“In order to ensure public safety on school campuses ... it is necessary that this act take effect immediately”]; Sen. Com. on Ed. (Apr. 28, 1993), Analysis of Assem. Bill No. 342, p. 2 [noting legislative purpose to enhance public safety]; see also Assem. Com. on Ed. (July 14, 1993), Analysis of Sen. Bill No. 1198, p. 1 [noting legislative purpose to remove those who possess firearms from the general school population by increasing the frequency of expulsion for such conduct].)

In challenging this conclusion, the Department relies upon [County of Los Angeles v. Department of Industrial Relations](#) (1989) 214 Cal.App.3d 1538, 263 Cal.Rptr. 351 ([Department of Industrial Relations](#)). In that case, the state enacted enhanced statewide safety regulations that governed all public and private elevators, and thereafter the County of Los Angeles sought reimbursement for the costs of complying with the new regulations. The Court of Appeal found that the regulations constituted neither a new program nor a higher level of service concerning an existing program under either of the two alternative tests set out in [County of Los Angeles, supra](#), 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. The court concluded that the elevator regulations did not meet the first alternative test, because the regulations did not carry out a governmental function of providing services to the public; the court found instead that *879 “[p]roviding elevators equipped with fire and earthquake **600 safety features simply is not a ‘government function of providing services to the public.’ ” ([Department of Industrial Relations, supra](#), 214 Cal.App.3d at p. 1546, 263 Cal.Rptr. 351.) Moreover, the court found, the second (“uniqueness”) test was not met-the regulation applied to all elevators, not only those owned or operated by local governments.

The Department asserts that [Department of Industrial Relations, supra](#), 214 Cal.App.3d 1538, 263 Cal.Rptr. 351, is analogous, and argues that the “service” afforded by mandatory suspensions followed by a required expulsion recommendation, etc., is “not quali-

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tatively different from the safety regulations at issue in [[Department of Industrial Relations](#)]. School districts carrying out such expulsions are not providing a service to the public....” We disagree. Providing public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public. Moreover, here, unlike the situation in [Department of Industrial Relations](#), the law implementing this state policy applies uniquely to local public schools. We conclude that [Department of Industrial Relations](#) does not conflict with the conclusion that the mandatory suspension and expulsion recommendation requirements, together with restrictions placed upon a district’s resolution of such a case, constitute an increased or higher level of service to the public under the constitutional provision and the implementing statutes.

Of course, even if, as we have concluded above, a statute effectuates an increased or higher level of governmental service to the public concerning an existing program, this “does not necessarily lead to the conclusion that the program is a *state* mandate”⁴⁷⁹ under [California Constitution, article XIII B, section 6](#).” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304, italics added (*County of Los Angeles II*)). We turn to the question whether the hearing costs at issue, flowing from compulsory suspensions and mandatory expulsion recommendations, are mandated by the state.

2. Are the hearing costs state mandated?

As noted above, a compulsory suspension and a mandatory recommendation of expulsion under [Education Code section 48915](#) in turn trigger a mandatory expulsion hearing. All parties agree that any such resulting expulsion hearing must comply with basic federal due process requirements, such as notice of charges, a right to representation by counsel, an explanation of the evidence supporting the charges, and an opportunity to call and cross-examine witnesses and to present evidence. (See *ante*, fn. 5.) But as also noted above, [article XIII B, section 6](#), and the implementing statutes ⁸⁸⁰ ([Gov.Code, § 17500 et seq.](#)), by their terms, provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs. The Commission and the Department assert that this circumstance raises the question: Do all or

some of a district’s costs in complying with the mandatory expulsion provision of [Education Code section 48915](#) constitute a nonreimbursable *federal* mandate?

In the absence of the operation of [Education Code section 48915](#)’s mandatory provision (specifically, compulsory immediate suspension and a mandatory expulsion recommendation), a school district would not automatically incur the due process hearing costs that are mandated by federal law pursuant to [Goss, supra](#), 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, and related cases, and codified in [Education Code section 48918](#). Instead, a district would incur such hearing costs only if a school principal first were to exercise discretion to recommend expulsion. Accordingly, in its mandatory aspect, [Education Code section 48915](#) appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.

The Department and the Commission agree to a point, but argue that a district’s costs incurred in complying with this state mandate are reimbursable only if, and to the extent that, hearing procedures set forth in [Education Code section 48918](#) exceed the requirements of federal due process. In support, they rely upon ⁶⁰¹[Government Code section 17556](#), which—in setting forth circumstances in which the Commission shall *not* find costs to be mandated by the state—provides that “[t]he commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.” ^{FN13}

^{FN13}. [Government Code section 17556](#) reads in full: “The commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school dis-

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trict to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph. [¶] (b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts. [¶] (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. [¶] (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. [¶] (f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election. [¶] (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

***480 *881 We agree with the District and the Court of Appeal below that, as applied to the present case, it cannot be said that [Education Code section 48915](#)'s mandatory expulsion provision “*implemented a federal law or regulation.*” (Italics added.) [Education Code section 48915](#), at the time relevant here, did not implement any federal law; as explained below, federal law did not *then* mandate an expulsion recommendation-or expulsion-for firearm possession.^{FN14} Moreover, although the Department argues

that in this context [Government Code section 17556](#), subdivision (c)'s phrase “the statute” should be viewed as referring not to [Education Code section 48915](#)'s mandatory expulsion recommendation requirement, but instead to the mandatory due process hearing under [Education Code section 48918](#) that is triggered by such an expulsion recommendation, it still cannot be said that [section 48918](#) itself required the District to incur any costs. As noted above, [Education Code section 48918](#) sets out requirements for expulsion hearings that must be held when a district seeks to expel a student-but neither [section 48918](#) nor federal law requires that any such expulsion recommendation be made in the first place, and hence [section 48918](#) does not implement any federal mandate that school districts hold such hearings and incur such costs whenever a student is found in possession of a firearm. Accordingly, we conclude that the so-called exception to reimbursement described in [Government Code section 17556](#), subdivision (c), is inapplicable in this context.

^{FN14}. Subsequent amendments to federal law may alter this conclusion with regard to future test claims concerning [Education Code section 48915](#)'s mandatory expulsion provision-see *post*, 16 Cal.Rptr.3d pages 481-482, 94 P.3d pages 602-603.

Because it is state law ([Education Code section 48915](#)'s mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, contrary to the view of the Commission and the Department, that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of [Education Code section 48915](#), as constituting a federal mandate (and hence being nonreimbursable). We conclude ***602 that under the statutes existing at the time of the test claim in this case (state legislation in effect through ***481 mid-1994), *all* such hearing costs-those designed to satisfy the minimum requirements of federal due process, and those that may exceed *882 those requirements-are, with respect to the mandatory expulsion provision of [section 48915](#), state mandated costs, fully reimbursable by the state.^{FN15}

^{FN15}. In Exhibit No. 1 to its claim, the District presented the declaration of a San Diego Unified School District official, esti-

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inating that in order to process “350 proposed expulsions” during the period spanning July 1, 1993, to June 30, 1994, the District would incur approximately \$94,200 “in staffing and other costs”-yielding an average estimated cost of approximately \$270 per hearing during the relevant period. It is unclear from the record how many of these 350 hearings would be triggered by [Education Code section 48915](#)'s mandatory expulsion provision (and constitute state-mandated costs subject to reimbursement under [article XIII B, section 6](#)), and how many of these 350 hearings would be triggered by [Education Code section 48915](#)'s discretionary provision (and, as explained *post*, in part II.B, constitute a nonreimbursable *federal* mandate).

We note that in the proceedings below, the Commission did not confine reimbursement only to those matters as to which the district on its own initiative would not have sought expulsion in the absence of the statutory requirement that it seek expulsion-and the Department has not raised that point in the trial court or on appeal.

Against this conclusion, the Department, in its supplemental briefing, offers a wholly new theory, not advanced in any of the proceedings below, in support of its belated claim that *all* hearing costs triggered by [Education Code section 48915](#)'s mandatory expulsion provision are in fact nonreimbursable *federal* mandates, and not, as we have concluded above, reimbursable state mandates. As we shall explain, we reject the Department's contention, as applied to the test case here at issue (involving state statutes in effect through mid-1994).

The Department cites [20 United States Code section 7151](#), part of the federal No Child Left Behind Act of 2001, which provides, as relevant here: “Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State,

except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.” [FN16](#)

[FN16](#). “Firearm,” as defined in [18 United States Code section 921](#), includes guns and explosives.

The Department further asserts that more than \$2.8 billion in federal funds under the No Child Left Behind Act are included “for local use” in the 2003-04 state budget. (Cal. State Budget, 2003-04, Budget Highlights, p. 4.) The Department argues that in light of the requirements set forth in [20 United States Code section 7151](#), and the amount of federal program funds at issue under the No Child Left Behind Act, the financial consequences to the state and to the school districts of failing to comply with [20 United States Code section 7151](#) are such that as a practical matter, [*883 Education Code section 48915](#)'s mandatory expulsion provision in reality constitutes an implementation of federal law, and hence resulting costs are nonreimbursable except to the extent they exceed the requirements of federal law. (See [Govt.Code, § 17556](#), subd. (c); see also [Kern High School Dist., supra, 30 Cal.4th 727, 749-751, 134 Cal.Rptr.2d 237, 68 P.3d 1203; City of Sacramento, supra, 50 Cal.3d 51, 70-76, 266 Cal.Rptr. 139, 785 P.2d 522.](#)) Moreover, the Department asserts, to the extent school districts are [***482](#) compelled by federal law, through [Education Code section 48915](#)'s mandatory expulsion provision, to hold hearings pursuant to [section 48918](#) in cases of firearm possession on school grounds, under [20 United States Code section 7164](#) (defining prohibited uses of program funds), *all* costs of such hearings properly may be paid out of federal program funds, and hence we should “view the ... provision of program funding as satisfying, in advance, any reimbursement requirement.” ([Kern High School Dist., supra, 30 Cal.4th 727, 747, 134 Cal.Rptr.2d 237, 68 P.3d 1203.](#))

[**603](#) Although the Department asserts that this federal law and program existed at the time relevant in this matter (that is, through mid-1994), our review of the statutes and relevant history suggests otherwise. [Title 20 of the United States Code, section 7151](#), and the remainder of the No Child Left Behind Act, became effective on January 8, 2002. The predecessor

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legislation cited by the Department—the Gun-Free Schools Act of 1994 (former [20 U.S.C. § 8921\(a\)](#)), although containing a substantially identical mandatory expulsion provision (*id.*, [§ 8921\(b\)\(1\)](#))^{FN17}—was not effective until July 1, 1995 (108 Stat. 3518, § 3). In turn, the predecessor legislation to *that* Act cited by the Department, the Elementary and Secondary Education Act of 1965 (former [20 U.S.C. § 6301 et seq.](#))—as it existed at the time relevant here (July 1, 1993, through June 30, 1994)—contained no such mandatory expulsion provision. Accordingly, it appears that despite the Department’s late discovery of [20 United States Code section 7151](#), at the time relevant here (regarding legislation in effect through mid-1994), neither [20 United States Code section 7151](#), nor either of its predecessors, compelled states to enact a law such as [Education Code section 48915](#)’s mandatory expulsion provision. Therefore, we reject the Department’s assertion that, during the time period at issue in this case, [Education Code section 48915](#)’s mandatory expulsion provision constituted an implementation of a federal, rather than a state, mandate.

^{FN17} The prior law stated: “Except as provided in paragraph (3), each State receiving Federal funds under this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.” ([Pub.L. No. 103-382, § 14601\(b\)\(1\)](#)) (Oct. 20, 1994) 108 Stat. 3518.)

Although we conclude that all hearing costs triggered by [Education Code section 48915](#)’s mandatory expulsion provision constitute reimbursable state-mandated expenses under the statutes as they existed during the period ^{*884} covered by the District’s present test claim, we do not foreclose the possibility that [20 United States Code section 7151](#) or its predecessor, [20 United States Code section 8921](#), may lead to a different conclusion when applied to versions of [Education Code section 48915](#) effective in years 1995 and thereafter. Indeed, we note that at least one

subsequent test claim that has been filed with the Commission may raise the federal statutory issue advanced by the Department.^{FN18}

^{FN18} See Pupil Expulsions II (4th Amendment), CSM No. 01-TC-18 (filed June 3, 2002). This claim, filed by the San Juan Unified School District, asserts reimbursable state mandates with respect to, among numerous other statutes, [Education Code section 48915](#), as amended effective in 2002.

B. Costs associated with hearings triggered by discretionary expulsion recommendations

[2] We next consider whether reimbursement is required for the costs associated^{***}483 with hearings triggered under discretionary expulsion provisions. Again, we address first the issue that we asked the parties to brief: Does the discretionary expulsion provision of [Education Code section 48915](#) (former subd. (c), thereafter subd. (d), currently subd. (e)), which, as noted above, recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing property, using or selling illicit drugs, possessing tobacco or drug paraphernalia, etc.), and further specified that the school district governing board “may” order a student expelled upon finding that the student, while at school or at a school activity off school grounds, engaged in such conduct, constitute a “new program or higher level of service” under [article XIII B, section 6 of the state Constitution](#), and under [Government Code section 17514](#)?

We answer this question in the negative. The discretionary expulsion provision of [Education Code section 48915](#) does not constitute a “new” program or higher level of service, because provisions recognizing discretion to suspend or expel were set forth in statutes predating 1975. (See Educ.Code, former ^{**}604 § 10601, Stats.1959, ch. 2, § 3, p. 860 [providing that a student may be suspended for good cause]; *id.*, former § 10602 (Stats.1970, ch. 102, § 102, p. 159 (defining “good cause”); *id.*, former section 10601.6 (Stats.1972, ch. 164, § 2, p. 384 (further defining “good cause”).))^{FN19} Accordingly, the discretionary expulsion provision of [Education Code section 48915](#) is not a “new” program under [article XIII](#)

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[B, section 6](#), and the implementing statutes, ***885** nor does it reflect a higher level of service related to an existing program. (*County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

FN19. As the Commission observed in its Corrected Statement of Decision in this matter: “The authorization for governing boards to expel pupils from school for inappropriate behaviors has been in existence since before 1975. The behaviors defined as inappropriate under current law, subdivisions (a) though (l) of [section 48900](#), [48900.2](#), and [48900.3](#), meet prior laws’ definitions of ‘good cause’ and ‘misconduct’ as reasons for expulsion.” (Italics deleted.)

The District maintains, nevertheless, that once it elects to pursue expulsion, it is obligated to abide by the procedural hearing requirements of [Education Code section 48918](#) and accordingly is mandated by that section to incur costs associated with such compliance. The District asserts that in this respect, [section 48918](#) constitutes a “new program or higher level of service” related to an existing program under [article XIII B, section 6](#) and under [Government Code section 17514](#). We shall assume for analysis that this is so.^{FN20}

FN20. The requirements of [Education Code section 48918](#) would appear to be “new” for purposes of the reimbursement provisions, in that they did not exist prior to 1975 and were enacted in that year and subsequently. (See *ante*, fn. 2.) The requirements also would appear to meet both alternative tests set forth in *County of Los Angeles, supra*, 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202—that is, by implementing procedures that direct and guide the process of expulsion from public school, the statute appears to carry out a governmental function of providing services to public school students who face expulsion; or, it would seem, [section 48918](#) constitutes a law that, to implement state policy, imposes unique requirements on local governments.

The District recognizes, of course, that under [Government Code, section 17556](#), subdivision (c), it is not entitled to reimbursement to the extent

[Education Code section 48918](#) merely implements federal due process law, but the District argues that it has a right to reimbursement for its costs of complying with [section 48918](#) to *****484** the extent those costs are attributable to hearing procedures that exceed federal due process requirements. (See [Govt.Code, § 17556](#), subd. (c).) The District asserts that its costs in complying with various notice, right of inspection, and recording requirements (see *ante*, fn. 11) fall into this category and are reimbursable.

The Department and the Commission argue in response that any right to reimbursement for hearing costs triggered by discretionary expulsions—even costs limited to those procedures that assertedly exceed federal due process hearing requirements—is foreclosed by virtue of the circumstance that when a school pursues a discretionary expulsion, it is not acting under compulsion of any law but instead is exercising a choice. In support, the Department and the Commission rely upon *Kern High School Dist., supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, and *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642 (*City of Merced*).

In *Kern High School Dist., supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, school districts asserted that costs incurred in complying with statutory notice and agenda requirements for committee meetings concerning various state and federally funded educational programs constituted a reimbursable state mandate, because once ***886** school districts *elected* to participate in the underlying state and federal programs, the districts had no option but to hold program-related committee meetings and abide by the challenged notice and agenda requirements. (*Id.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) We rejected the school districts’ position, reasoning in part that because the districts’ participation in the underlying programs was voluntary, the notice and agenda costs incurred as a result of that voluntary participation were not the product of legal compulsion and did not constitute a reimbursable state mandate on that basis. ****605**(*Id.*, at p. 745, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)^{FN21}

FN21. We also proceeded to hold that in any event, because the school districts were free to use program funds to pay for the challenged increased costs, the districts had, in

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practical effect, already been given funds by the Legislature to cover the challenged costs. (*Kern High School Dist.*, *supra*, 30 Cal.4th at pp. 748-754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In reaching that conclusion in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we discussed *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642. In that case, the city wished either to purchase or to condemn, pursuant to its eminent domain authority, certain privately owned real property. The city elected to proceed by eminent domain, under which it was required by then recent legislation (*Code Civ. Proc.*, § 1263.510) to compensate the property owner for loss of “business goodwill.” The city so compensated the property owner and then sought reimbursement from the state, arguing that the new statutory requirement that it compensate for business goodwill amounted to a reimbursable state mandate. (*City of Merced*, *supra*, 153 Cal.App.3d at p. 780, 200 Cal.Rptr. 642.) The Court of Appeal concluded that the city's increased costs flowing from its election to condemn the property did not constitute a reimbursable state mandate. (*Id.*, at pp. 781-783, 200 Cal.Rptr. 642.) The court reasoned: “[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.*” (*Id.*, at p. 783, 200 Cal.Rptr. 642, italics added.)

Summarizing this aspect of *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we stated: “[T]he core point articulated by the court in *City of Merced* is that *activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds-even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.*” (*Kern High School Dist.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203, italics

added.)

The Department and the Commission argue that in the present case the District, like the claimants in *Kern High School Dist.*, errs by focusing upon *887 the final result—a school district's legal obligation to comply with statutory hearing procedures—rather than focusing upon whether the school district has been *compelled* to put itself in the position in which such a hearing (with resulting costs) is required.

The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program. ^{FN22}

^{FN22}. Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced*, *supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: “All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.” The Court of Appeal below concluded: “In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [hearing] costs [under *Education Code section 48918*] cannot properly be viewed as a non-reimbursable ‘downstream’ consequence of a decision to [seek to] expel a student under [*Education Code section 48915*'s discretionary provision] for damaging or stealing school or private property, using or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of

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misconduct ... that warrant such expulsion.”

Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with [Education Code section 48200 et seq.](#) and [article IX, section 5 of the state Constitution](#) (establishing and implementing a right of public education), no expulsion recommendation is “truly discretionary.” Indeed, amicus curiae argues, school districts may not, “either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [Education Code section 48915](#)’s discretionary provision], because doing so would fail to meet that school district’s legal obligations to provide a safe, secure and peaceful learning environment for the other students.”

****606** Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of [City of Merced](#) so as to preclude reimbursement*****486** under ***888**[article XIII B, section 6 of the state Constitution](#) and [Government Code section 17514](#), whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in <http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&FindType=Y&SerialNum=1984115731>[City of Merced](#), public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying [article XIII B, section 6 of the state Constitution](#) and [Government Code section 17514](#)^{FN23} and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in [Carmel Valley, supra, 190 Cal.App.3d 521, 234 Cal.Rptr. 795](#), an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538, 234 Cal.Rptr. 795.) The court in [Carmel Valley](#) apparently did not contemplate that reimbursement would be foreclosed in that setting merely

because a local agency possessed discretion concerning how many firefighters it would employ-and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from [City of Merced, supra, 153 Cal.App.3d 777, 200 Cal.Rptr. 642](#), such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted [article XIII B, section 6](#), or the Legislature that adopted [Government Code section 17514](#), intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of [City of Merced](#) that might lead to such a result.

FN23. As we observed in [Kern High School Dist., supra, 30 Cal.4th 727, 751-752, 134 Cal.Rptr.2d 237, 68 P.3d 1203](#), “[article XIII B, section 6](#)’s ‘purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are “ill equipped” to assume increased financial responsibilities.’”

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in [City of Merced](#), because this aspect of the present case can be resolved on an alternative basis. As we shall explain, we conclude, regarding the reimbursement claim that we face presently, that *all* hearing procedures set forth in [Education Code section 48918](#) properly should be considered to have been adopted to implement a federal due process mandate, and hence that all such hearing costs are nonreimbursable under [article XIII B, section 6](#), and [Government Code section 17557](#), subdivision (c).

In this regard, we find the decision in [County of Los Angeles II, supra, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304](#), to be instructive. That case concerned [Penal Code section 987.9](#), which requires counties to provide indigent criminal defendants with defense funds for ancillary investigation services related to capital trials and certain other trials, and further provides related procedural protections-namely, the confidentiality of a request for funds, the

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right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request. The county in that case asserted that funds expended under the statute constituted reimbursable ****607** state mandates. The Court of Appeal disagreed, finding instead that the Penal Code section merely implements the requirements of federal constitutional law, and that “even in the ***889** absence of *****487**[[Penal Code](#)] [section 987.9](#), ... counties would be responsible for providing ancillary services under the constitutional guarantees of due process ... and under the Sixth Amendment...” ([32 Cal.App.4th at p. 815](#), [38 Cal.Rptr.2d 304.](#)) Moreover, the Court of Appeal concluded, the procedural protections that the Legislature had built into the statute-requirements of confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request-were merely incidental to the federal rights codified by the statute, and their “financial impact” was de minimis. (*Id.*, [at p. 817, fn. 7](#), [38 Cal.Rptr.2d 304.](#)) Accordingly, the Court of Appeal concluded, the Penal Code section, in its entirety-that is, *even those incidental aspects of the statute that articulated specific procedures, not expressly set forth in federal law, for the filing and resolution of requests for funds*-constituted an implementation of federal law, and hence those costs were nonreimbursable under [article XIII B, section 6](#).

We conclude that the same reasoning applies in the present setting, concerning the District’s request for reimbursement for procedural hearing costs triggered by its discretionary decision to seek expulsion. As in [County of Los Angeles II, supra, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304](#), the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in [County of Los Angeles II](#) concluded that, for pur-

poses of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under [Government Code, section 17556](#), subdivision (c). We reach the same conclusion here.

Indeed, to proceed otherwise in the context of a reimbursement claim would produce impractical and detrimental consequences. The present case demonstrates the point. The record reveals that in the extended proceedings before the Commission, the parties spent numerous hours producing voluminous pages of analysis directed toward determining whether various provisions of [Education Code section 48918](#) exceeded federal due process requirements. That task below was complicated by the circumstance that this area of federal due process law is not well developed. The Commission, which is not a judicial body, did as best it could and concluded that in certain ***890** respects the various provisions (as observed *ante*, footnote 11, predominantly concerning notice, right of inspection, and recording requirements) “exceeded” the requirements of federal due process.

Even for an appellate court, it would be difficult and problematic in this setting to categorize the various notice, right of inspection, and recording requirements here at issue as falling either within or without the general federal due process mandate. The difficulty results not only from the circumstance that, as noted, the case law *****488** in the area of due process procedures concerning expulsion matters is relatively undeveloped, but also from the circumstance that when such an issue is raised in an action for reimbursement, as opposed to its being raised in litigation challenging an actual expulsion on the ground of allegedly inadequate hearing procedures, the issue inevitably is presented in the abstract, without any factual context that might help frame the legal issue. In such circumstances, courts are-and should be-****608** wary of venturing pronouncements (especially concerning matters of constitutional law).

In light of these considerations, we agree with the conclusion reached by the Court of Appeal in [County of Los Angeles II, supra, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304](#); for purposes of ruling upon a request for reimbursement, challenged state rules or

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procedures that are intended to implement an applicable federal law-and whose costs are, in context, de minimis-should be treated as part and parcel of the underlying federal mandate.

State Mandates

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Applying that approach to the case now before us, we conclude there can be no doubt that the assertedly “excessive due process” aspects of [Education Code section 48918](#) for which the District seeks reimbursement in connection with hearings triggered by discretionary expulsions (see *ante*, footnote 11-primarily, as noted, various notice, right of inspection, and recording rules) fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost. Accordingly, for purposes of the District’s reimbursement claim, all hearing costs incurred under [Education Code section 48918](#), triggered by the District’s exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are non-reimbursable under [Government Code section 17556](#), subdivision (c).^{FN24}

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^{FN24}. We do not foreclose the possibility that a local government might, under appropriate facts, demonstrate that a state law, though codifying federal requirements in part, also imposes more than “incidental” or “de minimis” expenses in excess of those demanded by federal law, and thus gives rise to a reimbursable state mandate to that extent.

***891 III**

The judgment of the Court of Appeal is affirmed insofar as it provides for full reimbursement of all costs related to hearings triggered by the mandatory expulsion provision of [Education Code section 48915](#). The judgment of the Court of Appeal is reversed insofar as it provides for reimbursement of any costs related to hearings triggered by the discretionary provision of [section 48915](#). All parties shall bear their own costs on appeal.

WE CONCUR: [KENNARD](#), [BAXTER](#), [WERDEGAR](#), [CHIN](#), [BROWN](#), and [MORENO](#), JJ.

Cal.,2004.
San Diego Unified School Dist. v. Commission On

123 Cal.App.4th 563, 19 Cal.Rptr.3d 884, 192 Ed. Law Rep. 919, 04 Cal. Daily Op. Serv. 9615, 2004 Daily Journal D.A.R. 13,064

(Cite as: 123 Cal.App.4th 563, 19 Cal.Rptr.3d 884)

C

Court of Appeal, Fifth District, California.
TRI-COUNTY SPECIAL EDUCATION LOCAL
PLAN AREA et al., Plaintiffs and Appellants,

v.

COUNTY OF TUOLUMNE et al., Defendants and
Respondents.
No. F043143.

Oct. 26, 2004.

Background: Special education local plan area and county special education unit sued county and certain officials seeking to force the county to continue providing Individuals with Disabilities Education Act (IDEA) mental health services for persons with exceptional needs and to repay plaintiffs for funds spent to provide services after defendants' termination of services. The Superior Court, Tuolumne County, No. CV49559, Eleanor Provost, J., sustained defendants' demurrer without leave to amend and dismissed complaint. Plaintiffs appealed.

Holdings: The Court of Appeal, Vartabedian, Acting P.J., held that:

- (1) plaintiffs did not assert duties under unenforceable unfunded state mandate, and
- (2) plaintiffs could not seek judicial enforcement of county's obligation under IDEA.

Affirmed.

West Headnotes

[1] Appeal and Error 30  **863**

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in
General

30k862 Extent of Review Dependent on
Nature of Decision Appealed from

30k863 k. In General. [Most Cited Cases](#)

Where judgment was entered upon the granting of demurrer, Court of Appeal's summary of facts is limited to those pled in the complaint, together with facts

judicially noticeable.

[2] States 360  **111**

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and
Statutory Liabilities. [Most Cited Cases](#)

If a county believes state funding for a mandated program is inadequate, the local government may file a claim with the Commission on State Mandates and, if the claim is denied, seek review by writ of administrative mandate in superior court. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17581](#).

[3] States 360  **111**

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and
Statutory Liabilities. [Most Cited Cases](#)

A county is excused from duties imposed under a state mandate if the Legislature specifically states that the mandated program is not funded or if the superior court in Sacramento declares the program an unfunded mandate; however, these avenues for relief from duties imposed by state mandate are exclusive. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code §§ 17559, 17581, 17612](#).

[4] States 360  **111**

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and
Statutory Liabilities. [Most Cited Cases](#)

Without first exhausting administrative remedies, a local agency cannot claim a state mandate is unfunded, in violation of state Constitution, in defense of its failure to perform its duty. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17581](#).

[5] States 360  **111**

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[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)

Action by special education local plan area seeking to force county to continue providing mental health services did not assert duties under unenforceable unfunded state mandate where, although legislature reduced to nominal level funding to counties for Individuals with Disabilities Education Act (IDEA) programs, legislature did not specifically identify mental health services mandate as unfunded. Individuals with Disabilities Education Act, § 601 et seq., as amended, [20 U.S.C.A. § 1400 et seq.](#); [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code §§ 7573, 7576, 17581](#).

[6](#) Counties [104](#) [140](#)

[104](#) Counties

[104VI](#) County Expenses and Charges and Statutory Liabilities

[104k140](#) k. Liabilities Specially Imposed by Statute. [Most Cited Cases](#)

Special education local plan area and county special education unit had no cause of action to seek judicial enforcement of county's obligation to provide Individuals with Disabilities Education Act (IDEA) mental health services for persons with exceptional needs and to repay area and unit for funds spent to provide services; statutory and regulatory scheme vested cause of action in Superintendent of Public Instruction, and administrative remedy available to agencies, provided by IDEA, state statute, and regulations, was adequate and exclusive. Individuals with Disabilities Education Act, § 601 et seq., as amended, [20 U.S.C.A. § 1400 et seq.](#); [West's Ann.Cal.Gov.Code §§ 7573, 7576](#); [2 CCR § 60560](#); [5 CCR § 4600 et seq.](#)

See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 744; 10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, §§ 13, 14; Cal. Jur. 3d, Schools, § 260 et seq.

[7](#) Appeal and Error [30](#) [854\(1\)](#)

[30](#) Appeal and Error

[30XVI](#) Review

[30XVI\(A\)](#) Scope, Standards, and Extent, in General

[30k851](#) Theory and Grounds of Decision of Lower Court

[30k854](#) Reasons for Decision

[30k854\(1\)](#) k. In General. [Most Cited](#)

[Cases](#)

Court of Appeal reviews the judgment of the trial court, not its reasoning, and affirms if that judgment is correct.

[8](#) Declaratory Judgment [118A](#) [201](#)

[118A](#) Declaratory Judgment

[118AII](#) Subjects of Declaratory Relief

[118AII\(K\)](#) Public Officers and Agencies

[118AK201](#) k. Officers and Official Acts in General. [Most Cited Cases](#)

Declaratory relief laws do not independently empower the courts to stop or interfere with administrative proceedings by declaratory decree.

****886** [Gregory A. Wedner](#), San Rafael, [Elaine M. Yama](#), Fresno, and Lozano Smith for Plaintiffs and Appellants.

Marko H. Fong for Sonoma County Office of Education as amicus curiae on behalf of Plaintiffs and Appellants.

Shupe and Finkelstein and [Diane E. Finkelstein](#), San Mateo, for California School Board Association Alliance as amicus curiae on behalf of Plaintiffs and Appellants.

Protection & Advocacy, Inc., [Stephen A. Rosenbaum](#), Sherri L. Rita, [Dale Mentink](#), Sacramento; Youth and Education Law Clinic and William S. Koski for United Advocates for Children as amicus curiae on behalf of Plaintiffs and Appellants.

[Paul Griebel](#) and Walter J. de Lorrell III, Deputy County Counsel, for Defendants and Respondents.

Jennifer B. Henning for The California State Association of Counties as amicus curiae on behalf of Defendants and Respondents.

Livingston & Mattesich Law Corporation and [Karen L. Turner](#), Sacramento, for California Mental Health Directors Association as amicus curiae on behalf of Defendants and Respondents.

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*568 OPINION

[VARTABEDIAN](#), Acting P.J.

This is an appeal from judgment entered after the trial court sustained respondents' demurrer to appellants' complaint; the court denied appellants leave to amend. The case involves the duty to *569 provide mental health services to handicapped students; the appeal involves somewhat novel questions of exhaustion of administrative remedies in the context of disputes between governmental agencies. We will conclude that both appellants and respondents have failed to exhaust administrative remedies. Accordingly, we will affirm the judgment but disagree with one of the trial court's grounds for sustaining the demurrer.

FACTS AND PROCEDURAL HISTORY

[1] Because judgment was entered upon the granting of demurrer, our summary of facts is limited to those pled in the complaint, together with facts judicially noticeable. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672, 34 Cal.Rptr.2d 386, 881 P.2d 1083.)

A. The Parties

Appellant Tri-County Special Education Local Plan Area is a public entity organized pursuant to [Education Code section 56195 et seq.](#) It is alleged to be "responsible for assuring access to special education and related services for individuals with exceptional needs who reside within [Tuolumne, Amador, and Calaveras Counties], administering the special education local **887 plan, and providing funding for the educational needs of students placed in residential facilities." Appellant Tuolumne County Special Education Unit "is an entity created by agreement of Tuolumne County school districts to consolidate services under their Special Education Local Plan." It "is a public entity responsible for ensuring that all individuals with exceptional needs who reside within Tuolumne County are provided equal access to special education programs ... and for ensuring compliance with ... State and Federal laws, statutes, and regulations" relating to such individuals. There is no need to distinguish between the two appellants for purposes of this appeal, and we will refer to them

jointly as appellants.

Respondents are the County of Tuolumne; its board of supervisors; the supervisors individually; and the county administrator, county counsel, and the county director of mental health, all sued in their official capacities and as individuals.

B. The Statutory Framework

The State of California receives funds under the federal Individuals with Disabilities Education Act (IDEA), [20 United States Code section 1400 et seq.](#) As a result, it must comply with the requirements of the act. (See [20 U.S.C. § 1412\(a\)](#).) In order to do so, the Legislature enacted certain provisions of the Government Code, as particularly relevant to the present appeal, [sections 7573](#) and [7576](#).

*570 The primary goal of IDEA is to ensure that children with disabilities receive special education and related services "designed to meet their unique needs and prepare them for employment and independent living." (See [20 U.S.C. § 1400\(d\)](#).) By means of [Government Code sections 7573](#) and [7576](#), the Legislature has divided responsibility for educational services and mental health services between the Superintendent of Public Instruction and the "Department of Mental Health, or any community mental health service." ([Gov.Code, § 7576](#), subd. (a).)

In that division of services, the Superintendent of Public Instruction is required to ensure that local educational agencies provide the educational and related services necessary and appropriate under a child's individualized education plan. However, local educational agencies "shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations." ([Gov.Code, § 7573](#).) Each county's community mental health service is "responsible for the provision of assessments and mental health services" included in an individualized education plan. ([Cal.Code Regs., tit. 2, § 60200](#).)

C. The Problem

According to respondents, state funding to counties for IDEA mental health services in the 2001-2002

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fiscal year was \$47 million. In the 2002-2003 fiscal year, that funding was reduced to \$1,000 statewide.

In response to this reduction in funding, the individual respondents recommended action or acted (depending on their position within county government) to terminate the provision to special education students of mental health services required by their individualized education plans. Termination was effective January 1, 2003.

According to appellants' complaint, as a result of respondents' actions, appellants "will be obligated to provide mandated mental health services" previously provided and paid for by respondents.

D. Proceedings in the Trial Court

Appellants sued respondents on February 14, 2003, seeking to force the county to ****888** continue providing mental health services and to repay appellants for funds spent to provide services after respondents' original termination of services. (We will discuss certain of these causes of action more particularly as we address the issues below.) The governmental-entity respondents demurred to the complaint, contending (as relevant here) appellants had failed ***571** to exhaust administrative remedies and that the county was relieved of the duty to provide services because the statutory obligation was an unfunded state mandate. The individual respondents separately demurred, asserting immunity for legislative acts, absence of a personal duty to provide services, and failure to exhaust administrative remedies.

After hearing, the trial court sustained both demurrers without leave to amend. As to the governmental respondents, the court concluded appellants had failed to exhaust administrative remedies and that the county had no duty to provide services under an unfunded state mandate. In addition, the court concluded, as to the individual respondents, that all of their actions "were within the sphere of legislative activity for which they are absolutely immune." The court ordered dismissal of the complaint. Appellants filed a timely notice of appeal.

DISCUSSION

Appellants contend respondents are not entitled to

assert as a defense that their duties under [Government Code section 7576](#) were excused by the failure of the Legislature to fund that mandate. Appellants also contend the available administrative remedies were insufficient to provide relief and that exhaustion of those remedies was, as a result, excused. Finally, they contend certain of the causes of action do not, as a matter of law, require exhaustion of administrative remedies before commencement of judicial action.

A. Unfunded State Mandates

The California Constitution provides: "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 program or increased level of service," with exceptions not relevant here. (Cal. Const., art. XIII B, [§ 6](#) (hereafter, [section 6](#)).)

The Legislature has created a set of remedies if a local government claims a violation of [section 6](#). First, local governments are not required to implement a program if a court, the Legislature, or the Commission on State Mandates (hereafter, the Commission) has identified the program as a new mandate or a mandate for a higher level of service, *and* if the Legislature has "specifically" identified the program as a mandate for which no funding is provided. ([Gov.Code, § 17581](#), subd. (a).) To meet the requirement of being specifically identified by the Legislature, the program must be "included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing ***572** the appropriation for mandate reimbursements." ([Gov.Code, § 17581](#), subd. (a)(2).) If these conditions are met, the local government is permitted to make its own determination not to implement the mandate.

[2] If a county believes state funding for a mandated program is *inadequate*, the local government may file a claim with the Commission and, if the claim is denied, seek review by writ of administrative mandate in superior court. ****889**([Redevelopment Agency v. Commission on State Mandates](#) (1996) 43 Cal.App.4th 1188, 1195, 51 Cal.Rptr.2d 100.) In addition, after spending funds on state mandated pro-

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grams, the local government may file a claim for reimbursement with the Commission, whose decision is judicially reviewable. ([Gov.Code, § 17559](#).) If the Legislature refuses to fund a program identified by the Commission as a reimbursable state mandate, the local government may file an action for declaratory relief in “the Superior Court of the County of Sacramento ... to declare the mandate unenforceable and enjoin its enforcement.” ([Gov.Code, § 17612](#), subd. (c).)

[3][4] Thus, a county is excused from duties imposed under a state mandate if the Legislature specifically states that the mandated program is not funded or if the superior court in Sacramento declares the program an unfunded mandate.^{FN1} These avenues for relief from duties imposed by state mandate are exclusive. ([Central Delta Water Agency v. State Water Resources Control Bd.](#) (1993) 17 Cal.App.4th 621, 641, 21 Cal.Rptr.2d 453.) “Until [local agencies] have exhausted their administrative remedy before the Commission, [they] cannot know whether the statute imposes a state-mandated cost” (*ibid.*) or whether that cost will be reimbursed pursuant to the Commission's award on a claim. Without first exhausting the administrative remedies, the local agency cannot claim a [section 6](#) violation in defense of its failure to perform its duty. (See [Central Delta Water Agency, supra, at p. 641.](#)) After a determination by the Commission that reimbursement is due, but only then, may the local government bring a traditional [§573](#) mandamus action or proceed pursuant to [Government Code section 17612](#). ([Carmel Valley Fire Protection Dist. v. State of California](#) (1987) 190 Cal.App.3d 521, 548, 234 Cal.Rptr. 795.)^{FN2}

^{FN1}. In the normal course, this matter was submitted for decision at oral argument on September 14, 2004. On October 1, 2004, respondents filed a motion to vacate submission. The motion contended that a final declaratory judgment of the Superior Court for Sacramento County in an action by certain counties against the State of California (case No. 04AS000371) had become final and was determinative of the present case as a matter of collateral estoppel. The judgment in the Sacramento County case stated: “[J]udgment is entered in favor of plaintiff counties San Diego, Sacramento, Orange and Contra Costa on the cause of action for declaratory

relief. Plaintiff counties need not provide the AB 3632 or AB 2726 services absent adequate, good faith funding from the State.” Respondents have advised this court that the Sacramento County judgment has become final by virtue of the failure of any party to file a notice of appeal in a timely manner.

We deny the motion to vacate submission. The present case does not raise the question whether the programs in question are an unfunded state mandate. Rather, the present case concerns the appropriate method by which a county may be relieved of its duty under a program it contends is an unfunded mandate and the method for interagency enforcement of duties under IDEA. The judgment of the Sacramento County Superior Court does not address these issues.

^{FN2}. A limited exception to the exhaustion of remedies requirement applies where one local government has filed a test claim relating to the same state mandate and the administrative process on that test claim is complete. In that circumstance, the administrative record can be made available and a second local government may proceed without itself exhausting a futile administrative process. ([County of San Diego v. State of California](#) (1997) 15 Cal.4th 68, 89, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

[5] Attempting to avoid the body of law just discussed, respondents mischaracterize both the law and the Legislature's actions. Respondents provide the following erroneous summary of [Government Code section 17581](#), subdivision (a): “When [state] funds are not provided ..., the County is no longer ‘... required to implement or give effect to ...’ the statute ****890** mandating the provision of services. [Government Code section 17581\(a\)](#).” As set forth above, however, legislative action provides self-executing relief of local governments from mandated duties only when the Legislature specifically states that the mandate is not funded. ([Gov.Code, § 17581](#), subd. (a)(2).)

Accordingly, respondents are also wrong when they

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claim that the Legislature, in providing only nominal funding for the mandate, enacted “the functional equivalent of no funds for the program,” as contemplated in [Government Code section 17581](#), subdivision (a)(2). This is a misstatement because there is no “functional equivalent” to the legislative action specified in [section 17581](#). Simply put, the Legislature has not specifically identified the mental health services mandate as unfunded.

Respondents give only one reason in urging us to ignore the plain requirement of [Government Code section 17581](#). They argue: “In construing the meaning of a statutory provision, the language should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.”

The intent of the Legislature, however, could not be more clear: until and unless a court or the Legislature itself has relieved a local government of a statutory mandate, the local government must perform the duties imposed by the mandate. In establishing an exclusive remedy by which local governments may claim funding for mandated programs (see [Gov.Code, § 17552](#)), the Legislature has ensured an orderly procedure for resolving these issues, eschewing the local government anarchy that would result from recognizing a county's ability *sua sponte* to declare itself relieved of the statutory mandate.^{FN3}

[FN3](#). We grant respondents' request for judicial notice filed January 5, 2004, consideration of which previously was deferred. As stated in the text, however, the designation of a program as “unfunded” by the Legislative Analyst's Office does not vest any power in a local government unilaterally to terminate an “unfunded” program.

*574 For the foregoing reasons, we conclude the trial court erred in sustaining respondents' demurrers on the basis that appellants' complaint asserted duties under an unenforceable unfunded state mandate.

B. Appellants' Failure To Exhaust Administrative Remedies

[6] As an alternative basis for sustaining the demurrer, the trial court found appellants had failed to ex-

haust available administrative remedies. Appellants contend the available remedies were inadequate (and therefore excused) and that certain of their causes of action did not require exhaustion of administrative remedies.

Appellants' discussion of the exhaustion of remedies issue in its opening brief focuses solely on [Government Code section 7585](#). That section permits a local agency (as well as a parent or adult pupil) to file an administrative complaint when another local agency fails to provide services required by an individualized education plan. ([Gov.Code, § 7585](#), subd. (a)); see also [Cal.Code Regs., tit. 2, § 60600, subd. \(b.\)](#).^{FN4} Appellants correctly point out that courts have excused compliance with piecemeal administrative remedies when the issues to be litigated involve systemic shortfalls incapable of resolution in an available administrative proceeding. (See [**891 Glendale City Employees' Assn., Inc. v. City of Glendale \(1975\) 15 Cal.3d 328, 342-343, 124 Cal.Rptr. 513, 540 P.2d 609.](#))

[FN4](#). We grant appellants' request for judicial notice filed September 18, 2003, consideration of which previously was deferred.

The individualized hearing contemplated by [Government Code section 7585](#) is not, however, the only available administrative procedure. As appellants recognize in their reply brief, an administrative procedure specifically targeted at the kind of dispute now before us is contained both in California administrative regulations and in the underlying federal legislation.

[20 United States Code section 1412\(a\)\(12\)\(B\)\(ii\)](#) provides, as relevant here: “If a public agency other than an educational agency fails to provide or pay for ... special education and related services ..., the local educational agency ... shall provide or pay for such services to the child. Such local educational agency ... may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency ... according to the procedures established” in the interagency agreement required by an earlier provision ([20 U.S.C. § 1412\(a\)\(12\)\(A\)\(i\)](#)).

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*575 The “procedures established” are specified in the state regulations adopted pursuant to [Government Code section 7587, California Code of Regulations, title 2, section 60560](#), provides: “Allegations of failure by ... [a] Community Mental Health Service[] ... to comply with these regulations shall be resolved pursuant to Chapter 5.1, commencing with [Section 4600, of Division 1 of Title 5 of the California Code of Regulations](#),” entitled “Uniform Complaint Procedures.”

The uniform complaint procedures provide for an investigation and report by the state Superintendent of Public Instruction whenever a “complaint alleges that a public agency, other than a local educational agency ..., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate education to handicapped individuals.” ([Cal.Code Regs., tit. 5, § 4650\(a\)\(vii\)\(A\)](#).)

Notwithstanding the federal statutory requirement that appellants “provide or pay” for necessary services and then seek reimbursement through the inter-agency procedure, appellants contend they are not required to follow this route because respondents did not identify this procedure below as one to be exhausted and the procedure does not permit an adequate remedy.

[7] This contention is both factually and legally incorrect: Factually, respondents did identify the uniform complaint procedures as a full and adequate administrative remedy in documents filed in the trial court. Legally, we review the judgment of the trial court, not its reasoning, and we affirm if that judgment is correct. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 340, pp. 382-383.) The trial court did not specify the administrative remedy appellants had failed to exhaust, but the applicability of the uniform complaint procedures is an issue of law properly determined on appeal.

Nor do we agree with appellants that the administrative remedy is inadequate. Although the regulations specify that the Superintendent of Public Instruction may elect to sanction a local agency by withholding funds (see [Cal.Code Regs., tit. 5, § 4670, subd. \(a\)\(1\)](#)), that remedy is not exclusive. The regulation itself permits the superintendent to file an action in a court of competent jurisdiction to compel the local

agency's compliance. ([Cal.Code Regs., tit. 5, § 4670, subd. \(a\)\(3\)](#).) Further, the regulation generally permits the superintendent to use “any means authorized by law to effect compliance.” ([Cal.Code Regs., tit. 5, § 4670, subd. \(a\)](#).)

**892 *576 Not only are we satisfied the administrative remedy is adequate, we are satisfied the administrative remedy is intended to be exclusive. First, the regulations specifically state that allegations of failure by a community mental health department to provide services “shall be resolved” pursuant to the administrative procedure. ([Cal.Code Regs., tit. 2, § 60560](#).)

Further, the Superintendent of Public Instruction is specifically charged with the duty to “ensure that this chapter [concerning interagency services to handicapped children] is carried out through monitoring and supervision.” ([Gov.Code, § 7570](#).) Permitting local educational agencies to proceed directly to court to enforce IDEA conflicts with this supervisory authority.

Finally, the complex web of funding for programs such as this requires that the superintendent retain the greatest possible discretion in resolving interagency disputes, so as to leave open the possibility (to take a purely hypothetical example) that the superintendent would elect to direct funding to the local educational agency instead of funding an uncooperative community mental health department: IDEA does not *require* an educational agency providing mental health services to seek reimbursement, but merely permits it to do so. (See [20 U.S.C. § 1412\(a\)\(12\)\(b\)](#).)

As a result of these considerations of exclusivity, we conclude there is no cause of action vested in a local administrative agency to seek *judicial* enforcement of another agency's obligations under IDEA. The statutory and regulatory scheme vests that cause of action in the Superintendent of Public Instruction, and a local agency's exclusive remedy is through the administrative process established by the uniform complaint procedures.

[8] Appellants contend that certain of their causes of action simply are not subject to the requirement of exhaustion of remedies. For example, they contend in their opening brief that “[n]o exhaustion is required”

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for declaratory relief. This claim is made without further explanation or citation of authorities. It is also wrong: “The declaratory relief provisions do not independently empower the courts to stop or interfere with administrative proceedings by declaratory decree.” (*Walker v. Munro* (1960) 178 Cal.App.2d 67, 72, 2 Cal.Rptr. 737.)

In their reply brief, appellants recast this argument in terms of the futility exception to the exhaustion requirement, citing *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 55 Cal.Rptr.2d 465. In that case, as a matter of policy interpretation, the city made a particular determination each time the same zoning issue was presented to it. Plaintiffs contended the policy conflicted with state law. In seeking dismissal of *577 plaintiff's action, the city contended administrative appeals from individual zoning decisions were sufficient to provide relief to plaintiffs. The court held exhaustion was not required because the administrative hearings, while potentially correcting individual errors, could not force the city to change its underlying policy. (*Id.* at p. 1568, 55 Cal.Rptr.2d 465.)

In the present case, the administrative process is fully capable of providing complete relief to appellants. Equally important, the determination of the type of relief to be awarded is specifically entrusted to the discretion of the Superintendent of Public Instruction by the very laws that establish appellants as entities. In these circumstances, appellants are not entitled to bypass the superintendent's exercise of discretion by presenting the issues directly to a court.

Appellants also contend their causes of action under the Unruh Civil Rights Act, **893 [Civil Code section 51 et seq.](#), and the Federal Civil Rights Act, 42 [United States Code section 1983](#), do not require exhaustion. ^{FN5} IDEA provides that a complainant may file an action under the Constitution and federal laws which protect the rights of children with disabilities, “except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.” (20 U.S.C. § 1415(l).) Respondents rely on cases from the Ninth Circuit Court of Appeals for the proposition that exhaustion

is required prior to any court action, regardless of the nature of the cause of action, if it is based on injuries that are also remediable under IDEA administrative procedures. (See *Robb v. Bethel School District # 403* (9th Cir.2002) 308 F.3d 1047, 1050.)

^{FN5}. We seriously doubt that appellants are “aggrieved persons” under the Unruh Civil Rights Act and whether they have civil rights of which they can be illegally deprived under 42 [United States Code section 1983](#). Appellants are, after all, creatures of statute with only the rights, duties, and powers conferred upon them by statute. These issues of standing and substantive rights are not directly presented in this case, but the issues are related to appellants' subordinate role in a complex statutory scheme with detailed administrative remedies and the superintendent's statutory discretion to craft appropriate remedies in enforcing IDEA obligations.

While the parties disagree about the meaning of the federal cases, in a real sense typical administrative exhaustion cases do not speak to the unique issues in the present case. The considerations that arise in requiring an *individual* to pursue an administrative remedy within the structure of the governmental entity that has deprived him or her of rights are somewhat different from the considerations when one subordinate government entity is required to invoke the administrative adjudicatory powers of a superior administrative body to resolve a dispute between the complainant and another subordinate entity.

*578 The first important consideration is that a governmental entity has no vested, individual rights in the administration of a particular program. (See *County of Westchester v. New York* (2d Cir.2002) 286 F.3d 150 [agencies have no private right of action under IDEA].) Appellants are purely creatures of statute, and it is clear the Legislature could reassign administration of IDEA programs to a different entity if it chose to do so. If the Legislature were to so choose, appellants would not be entitled to any sort of due process hearing or appeal to contest the action. (Cf. *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 323, 86 S.Ct. 803, 15 L.Ed.2d 769 [state is not a “person” within meaning of Fifth Amendment due

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process protections].)

Second, and of greater importance, the statutory scheme clearly intends to invest the Superintendent of Public Instruction with the discretion to determine how and whether IDEA will be enforced against a community mental health department. As noted above, the federal statute, in essence, requires appellants to provide mental health services if respondents do not. While appellants are permitted to seek reimbursement from respondents, that permission is limited, by the express terms of the statute, to an administrative remedy. (See [20 U.S.C. § § 1412\(a\)\(12\)\(b\)](#).) From the standpoint of IDEA, appellants have no *right* to reimbursement from respondents; they have only the right to seek reimbursement through the administrative process. (We are not presented in this case with the unfunded-state-mandate ****894** issue if the Superintendent of Public Instruction exercised discretion to leave the costs of mental health services with appellants.)

As a result of these two factors, we conclude appellants have no rights enforceable against respondents through other causes of action, at least until the administrative process confers upon them such a right in the discretion of the Superintendent of Public Instruction.

***579 DISPOSITION**

The judgment is affirmed. Respondents are awarded costs on appeal.

WE CONCUR: [CORNELL](#) and [DAWSON](#), JJ.

Cal.App. 5 Dist., 2004.

Tri-County Special Educ. Local Plan Area v. County of Tuolumne

123 Cal.App.4th 563, 19 Cal.Rptr.3d 884, 192 Ed. Law Rep. 919, 04 Cal. Daily Op. Serv. 9615, 2004 Daily Journal D.A.R. 13,064

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150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622
(Cite as: 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762)

C
Court of Appeal, Second District, Division 3, California.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
COMMISSION ON STATE MANDATES, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
City of Artesia, etc., et al., Plaintiffs and Appellants,
v.
Commission on State Mandates, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
No. B183981.

May 10, 2007.

Background: County and cities presented test claims to California Commission on State Mandates, seeking reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board. Commission would not adjudicate claims on the ground that subvention was precluded by statute. County and cities sued Commission, seeking an order requiring State to reimburse them for carrying out new obligations, along with other relief. Commission and county and cities filed cross-motions for judgment on the pleadings. The Superior Court, Los Angeles County, Nos. BS089769 and BS089785, [Victoria G. Chaney](#), J., entered partial grant of cross-motions. Trial court also granted in part the petitions by county and cities for a writ of mandate directing Commission to consider the test claims and determine whether county and cities were entitled to reimbursement. Commission appealed and county and cities cross-appealed.

Holdings: The Court of Appeal, [Aldrich](#), J., held that (1) Commission forfeited its statute of limitations defense based on failure to raise it in trial court, and (2) question of whether obligations constituted federal or state mandates presented factual issues that

had to be addressed in the first instance by Commission.

Affirmed.

West Headnotes

[\[1\]](#) States 360 111

[360](#) States
[360III](#) Property, Contracts, and Liabilities
[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
“Subvention” under constitutional provision concerning reimbursement to local government for state-mandated programs generally means grant of financial aid or assistance, or subsidy. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[2\]](#) States 360 111

[360](#) States
[360III](#) Property, Contracts, and Liabilities
[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
Constitutional rule of state subvention that requires state to pay for new governmental programs imposed on local governments does not require state to reimburse local agencies for any incidental cost that may result from enactment of state law; rather, subvention requirement is restricted to governmental services which local agency is required by state law to provide to its residents. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[\[3\]](#) States 360 111

[360](#) States
[360III](#) Property, Contracts, and Liabilities
[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
Constitutional rule of state subvention which requires state to reimburse local government for implementing required governmental programs is intended to prevent state from transferring costs of government from itself to local agencies. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

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[4] States 360 🔑111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)

Under constitutional rule of state subvention which requires state to reimburse local government for governmentally imposed programs, reimbursement is required when state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

[5] Pleading 302 🔑343

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k343 k. In General. [Most Cited Cases](#)

Pleading 302 🔑350(2)

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k350 Application and Proceedings

Thereon

302k350(2) k. Time for Proceedings.

[Most Cited Cases](#)

A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired; the rules governing demurrers apply.

[6] Pleading 302 🔑350(8)

302 Pleading

302XVI Motions

302k342 Judgment on Pleadings

302k350 Application and Proceedings

Thereon

302k350(3) Hearing, Determination,

and Relief

302k350(8) k. Matters Considered.

[Most Cited Cases](#)

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judi-

cially notice.

[7] Appeal and Error 30 🔑863

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k862 Extent of Review Dependent on Nature of Decision Appealed from

30k863 k. In General. [Most Cited Cases](#)

On review of a judgment on the pleadings, the appellate court must determine if the complaint states a cause of action as a matter of law.

[8] Appeal and Error 30 🔑893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In General. [Most Cited](#)

[Cases](#)

On review of a judgment on the pleadings, the appellate court reviews the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory.

[9] Mandamus 250 🔑187.9(1)

250 Mandamus

250III Jurisdiction, Proceedings, and Relief

250k187 Appeal and Error

250k187.9 Review

250k187.9(1) k. Scope and Extent in General. [Most Cited Cases](#)

In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence; however, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

[10] Mandamus 250 🔑187.4

250 Mandamus

150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622
(Cite as: 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762)

[250III](#) Jurisdiction, Proceedings, and Relief

[250k187](#) Appeal and Error

[250k187.4](#) k. Presentation and Reservation in Lower Court of Grounds of Review. [Most Cited Cases](#)

On appeal from trial court's issuance of a writ of mandate directing the California Commission on State Mandates to set aside its decisions rejecting test claims of city and counties, which claims sought reimbursement pursuant to constitutional requirement for subvention for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit, Commission forfeited any right it may have had to assert 90-day statute of limitations defense, where Commission failed to raise the defense in its pleadings in the trial court. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.C.C.P. § 341.5](#).

[\[11\]](#) **Limitation of Actions 241**  [180\(2\)](#)

[241](#) Limitation of Actions

[241V](#) Pleading, Evidence, Trial, and Review

[241k180](#) Demurrer, Exception, or Motion Raising Defense

[241k180\(2\)](#) k. Matters Appearing on Face of Pleadings. [Most Cited Cases](#)

The time-bar of a statute of limitations may be raised by demurrer where the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, for the reason that it fails to state facts sufficient to state a cause of action.

[\[12\]](#) **Limitation of Actions 241**  [182\(5\)](#)

[241](#) Limitation of Actions

[241V](#) Pleading, Evidence, Trial, and Review

[241k181](#) Pleading Statute as Defense

[241k182](#) Necessity

[241k182\(5\)](#) k. Waiver or Estoppel by Failure to Plead. [Most Cited Cases](#)

Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer.

[\[13\]](#) **States 360**  [111](#)

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and

Statutory Liabilities. [Most Cited Cases](#)

In proceedings initiated by county and cities against California Commission on State Mandates for reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board, the question of whether the obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by the Commission; although provision of Government Code would have excluded from subvention any order that included a permit issued by Regional Water Boards, that section was unconstitutional under article imposing subvention requirement whenever the Legislature "or any state agency" mandated a new program or higher level of service, making it necessary to determine whether state mandates existed. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17516\(c\)](#).

See [9 Witkin, Summary of Cal. Law \(10th ed. 2005\) Taxation, §§ 119-122](#); [Cal. Jur. 3d, State of California, § 101 et seq.](#)

West Codenotes

Held Unconstitutional [West's Ann.Cal.Gov.Code § 17516\(c\)](#) **[764 Raymond G. Fortner, Jr.](#), County Counsel, [Judith A. Fries](#), Principal Deputy County Counsel for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

Burhenn & Gest, [Howard Gest](#), Los Angeles, and David Burhenn for Plaintiffs and Appellants County of Los Angeles, Los Angeles County Flood Control District and Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village.

[Thomas F. Casey III](#), County Counsel, (San Mateo) and [Miruni Soosaipillai](#), Deputy for City/County Association of Governments of San Mateo County, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Morrison & Foerster and [Robert L. Falk](#), San Francisco, for Bay Area Stormwater Management Agencies Association, as Amicus Curiae on behalf of Plaintiffs and Appellants.

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[Camille Shelton](#), Sacramento, and Eric D. Feller for Defendant and Appellant Commission on State Mandates.

[Bill Lockyer](#), Attorney General, [Tom Green](#) and [Mary E. Hackenbracht](#), Assistant Attorneys General, Helen G. Arens and Jennifer F. Novak, Deputy Attorneys General for Regional Water Quality Control Board, Los Angeles Region as Amicus Curiae on behalf of Defendant and Appellant.

[ALDRICH, J.](#)

*903 INTRODUCTION

The California Commission on State Mandates (the Commission) appeals from the judgment entered following the partial grant of cross-motions for judgment on the pleadings. The County of Los Angeles, the Los Angeles County Flood Control District, and the Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village (collectively, County/Cities) filed a cross-appeal from the judgment.

In 2001, the Regional Water Quality Control Board (Regional Water Board), Los Angeles Region, issued a National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater and urban runoff discharges, which obligated County/Cities to inspect industrial, *904 commercial and construction water treatment facilities (which obligation County/Cities claim the State previously performed) and to install and maintain trash receptacles at transit stops.

County/Cities presented “test claims” ^{FN1} to the Executive Director of the Commission**765 seeking reimbursement for carrying out these obligations pursuant to the constitutional requirement for subvention arising from a state mandate (Cal. Const., art. XIII B, § 6). The Executive Director returned the claims adjudicated, because they did not involve an executive order under [section 17516 of the Government Code](#) (Section 17516c). In denying the appeals of County/Cities, the Commission noted it was without authority to declare a statute unconstitutional and concluded that Section 17516c excludes from the subvention requirement any order, which includes a

permit, issued by the Regional Water Boards of the State Water Resources Control Board (State Water Board).

^{FN1}. “ ‘Test claim’ means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.” ([Gov.Code, § 17521.](#))

[Section 6 of article XIII B](#) of the California Constitution (article XIII B, [section 6](#)) provides in pertinent part: “Whenever the Legislature or *any state agency* mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service....” (Italics added.)

As we shall discuss, Section 17516c is unconstitutional to the extent it exempts Regional Water Boards from the constitutional state mandate subvention requirement. Its creation of an exception for Regional Water Boards, which are state agencies, contravenes the plain, unequivocal, and all-inclusive reference to “any state agency” in [article XIII B, section 6](#). Moreover, a contrary conclusion is not compelled by virtue of the fact that Section 17516c essentially mirrors the language of [section 2209, subdivision \(c\) \(§ 2209\(c\)\) of the Revenue and Taxation Code](#). A statute cannot trump the constitution.

We decline to consider the Commission's new claim that the constitutional challenge to Section 17516c by County/Cities is barred by the 90-day limitation period of [section 341.5 of the Code of Civil Procedure](#). This statute of limitations defense, which should have been raised before the trial court, is not cognizable on this appeal.

*905 The Commission urges that should this court conclude Section 17516c is unconstitutional, the appropriate remedy is to afford the Commission the opportunity to pass on the merits of the subject test claims on the issues of whether: (1) the subject permit qualifies as a state mandated program under [article XIII B, section 6](#); (2) the permit amounts to a new program or higher level of service; and (3) the permit imposes costs on local entities ([Gov.Code, §§ 17514, 17556](#)). We find its position persuasive.

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The cross-appeal filed by County/Cities is premised on the theory that if subvention of funds from the Commission is foreclosed by Section 17516c, County/Cities are entitled to pursue an independent action against the Regional Water Board, Los Angeles Region (LA Regional Water Board). This cross-appeal, which is simply protective in nature, is moot.

In sum, we uphold the trial court's issuance of a writ of mandate directing the Commission to set aside its decisions affirming its Executive Director's rejections of the subject test claims and to consider fully these test claims and determine whether County/Cities are entitled to reimbursement without consideration of Section 17516c, and we affirm the judgment in its entirety.

BACKGROUND

1. [Article XIII B, section 6](#), *Subvention of Funds for State Mandates*

“The electorate approved Proposition 4 in 1979, thus adding article XIII B to the **766 state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called ‘Spirit of 13,’ imposed a complementary limit on the rate of growth in governmental spending.” ([San Francisco Taxpayers Assn. v. Board of Supervisors](#) (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) This measure also “provided [for] reimbursement to local governments for the costs of complying with certain requirements mandated by the state.” ([Long Beach Unified Sch. Dist. v. State of California](#) (1990) 225 Cal.App.3d 155, 172, 275 Cal.Rptr. 449.)

“[V]oters were told that [section 6](#) of Proposition 4 was intended to prevent state government attempts ‘to force programs on local governments without the state paying for them.’ (Ballot Pamp., Special State-wide Elec. [(Nov. 6, 1979)] p. 18.)” ([County of Sonoma v. Commission on State Mandates](#) (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784; see also, [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202 [intent was not all local costs arising from compliance with state law to be reimbursable; rather, intent was to prevent “the perceived *906 attempt by

the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public”].)

“[Section 6](#) was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [Citation.] The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the ‘state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,’ read in its textual and historical context [section 6 of article XIII B](#) requires subvention only when the costs in question can be recovered *solely from tax revenues.*” ([County of Fresno v. State of California](#) (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, italics original; see also, [Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318 [a reimbursement requirement was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources”].)

Article XIII B, [section 6](#) provides: “(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide such a subvention of funds for the following mandates. [¶] (1) Legislative mandates requested by the local agency affected. [¶] (2) Legislation defining a new crime or changing an existing definition of a crime. [¶] (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

[1] “ ‘Subvention’ generally means a grant of financial aid or assistance, or a **767 subsidy. [Citation.]

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As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

[2][3][4] “Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.] This does not mean that the state is required to *907 reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by state law to provide to its residents. [Citation.] The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. [Citation.] Reimbursement is required when the state ‘freely chooses to impose on local agencies *any* peculiarly “governmental” cost which they were not previously required to absorb.’ [Citation.]” ([Hayes v. Commission on State Mandates \(1992\) 11 Cal.App.4th 1564, at 1577-1578, 15 Cal.Rptr.2d 547.](#))

The subvention requirement of [article XIII B, section 6](#) is triggered if “the Legislature or any state agency” mandates a new program or higher level of service. ([Art. XIII B, § 6.](#)) Such requirement is inapplicable where the additional costs on local governments are imposed by a federal mandate, i.e., the federal government. [Article XIII B, section 9](#), subdivision (b), defines federally mandated appropriations as those “required to comply with mandates of the courts or the federal government which, *without discretion*, require an expenditure for additional services or which *unavoidably make the provision of existing services more costly.*” ^{FN2} (Italics added.)

^{FN2}. “In 1980, after the adoption of [article XIII B](#), [the Legislature] amended the statutory definition of ‘costs mandated by the federal government’ to provide that these include ‘costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties* or *loss of funds to public or private persons* in the state....’ ([Rev. & Tax.Code, § 2206](#), ital-

ics added; Stats.1980, ch. 1256, § 3, p. 4247.)” ([City of Sacramento v. State of California \(1990\) 50 Cal.3d 51, 75, 266 Cal.Rptr. 139, 785 P.2d 522.](#))

There is no precise formula or rule for determining whether the “costs” are the product of a federal mandate. Our Supreme Court explained: “Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of [article XIII B, section 9\(b\)](#): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.” ([City of Sacramento v. State of California, supra](#), 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

2. Existence of State Mandate Matter for the Commission

Whether a particular cost incurred by a local government arises from carrying out a state mandate for which subvention is required under [article XIII B, section 6](#), is a matter for the Commission to determine in the first instance.

*908 A local government initiates the process for subvention under [article XIII B, section 6](#) by filing a claim with the Commission.**768 ([Gov.Code, § 17521](#); cf. [County of San Diego v. State of California \(1997\) 15 Cal.4th 68, 89, 61 Cal.Rptr.2d 134, 931 P.2d 312](#) [futility exception to exhaustion of administrative remedies doctrine applicable to failure to file claim before Commission].) The initial claim is referred to as a “test claim.” ([Gov.Code, § 17521.](#))

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“The Legislature enacted [Government Code sections 17500 through 17630](#) to implement [article XIII B, section 6](#). (Gov.Code, § 17500.)” (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.) The provisions of [Government Code sections 17500 et seq.](#) “provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by” [article XIII B, section 6](#). (Gov.Code, § 17552.)

“It created a ‘quasi-judicial body’ (*ibid.*) called the Commission on State Mandates ... ([Gov.Code], § 17525) to ‘hear and decide upon [any] claim’ by a local government that the local government ‘is entitled to be reimbursed by the state for costs’ as required by [article XIII B, section 6](#). (Gov.Code, § 17551, subd. (a).) It defined ‘costs’ as ‘costs mandated by the state’-‘any increased costs’ that the local government ‘is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program’ within the meaning of [article XIII B, section 6](#). (Gov.Code, § 17514.) Finally, in [section 17556\(d\)](#) it declared that ‘The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that’ the local government ‘has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.’ ” (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.)

3. Regional Water Board Order Not “Executive Order”

Section 17516c defines, in pertinent part, an “[e]xecutive order” [as] any order, plan, requirement, rule, or regulation issued by ... [a]ny agency ... of state government[,]” except an “[e]xecutive order” does not include any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with [Section 13000](#)) of the [Water Code](#).”^{FN3} (Added by Stats.1984, ch. 1459, § 1.)

FN3. Section 17516c further provides: “It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against

publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. ‘Major’ means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.”

LA Regional Water Board argues the trial court's ruling sustaining its demurrer to the fourth cause of action for a writ of mandate directing it to delete the subject two obligations under the Permit as violative of [section 17516](#) should be upheld, because [section 17516](#) “applies to construction of major waste treatment facilities, not trash receptacles or inspections.” This analysis, however, is inconsistent with the plain language of [section 17516](#) in its entirety.

909** In light of the above definition, the subject permit issued by an order of the LA Regional Water Board cannot constitute an “executive order implementing any statute[,] ... which mandates a new program or higher level of service of an existing program within the meaning of” the *769** [article XIII B, section 6](#) requirement of subvention of funds to local governments for carrying out a state mandate. ([Gov.Code, § 17514.](#))

4. Procedural Posture

LA Regional Water Board issued Order No. 01-182, which adopted NPDES Permit No. CAS004001 (Permit). This Permit imposed two obligations on County/Cities for the purpose of regulating municipal stormwater and urban runoff discharges in Los Angeles County. The first required County/Cities to inspect industrial, commercial and construction sites to ensure compliance with the law, and the other required County/Cities to install and maintain trash receptacles at transit stops.

County/Cities filed four test claims, i.e., Test Claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, seeking reimbursement of costs for carrying out these obligations. The Executive Director rejected these

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test claims as excluded from subvention pursuant to Section 17516c.

In the administrative appeals, the Commission found it was bound by Section 17516c, upheld its executive director's decision, and denied the appeals.

In their amended and consolidated petitions and complaints, County/Cities sought, among other things: (1) an order requiring the State to reimburse them for the new programs or higher level of service under the permit or, alternatively, to allow them to offset payment of permit and other fees or moneys owed or to be transferred to the State against their costs; (2) an order enjoining State from refusing to reimburse them in the future; or, alternatively, (3) a preemptory writ of mandate directing the Commission to accept their test claims and find they are entitled to reimbursement; (4) a declaration that [section 17516](#) is unconstitutional; (5) a preemptory writ of mandate directing LA Regional Water Board either to delete or not ***910** enforce the subject obligations under the permit; and (6) a stay of the challenged portions of the permit.

The Commission and County/Cities filed cross-motions for judgment on the pleadings. The trial court granted the Commission's motion as to the second cause of action for declaratory relief. The court explained: "The only actual controversy between [County/Cities] and [Commission] is whether [County/Cities]' claims should be deemed reimbursable. The sole and exclusive procedure by which to adjudicate this controversy is a mandate action under [Code of Civil Procedure section 1094.5](#). ([Government Code s]ections 17552, 17559.) The only pertinent relief under ... [section 1094.5](#) is a finding that [the Commission] 'has not proceeded in the manner required by law.' Declaratory relief is not available."

After construing the motion addressed to the third cause of action as a motion to strike improper requested relief, the court granted the motion and struck that part of the third cause of action requesting an order directing the Commission to find their claims to be reimbursable on the ground "[t]he court has no power at this time to do so. [Citations.]"

Turning to County/Cities' motion for judgment on the pleadings, the trial court granted the motion as to the third cause of action for extraordinary writ relief,

except as to the stricken request for improper relief.^{FN4}

[FN4](#). In the third cause of action, County/Cities sought a writ of mandate ([Code Civ. Proc., § 1094.5](#)) compelling a court finding that [section 17516](#) was unconstitutional on its face or as applied in this action and directing the Commission to accept their test claims for filing and approving them for reimbursement.

The court found that to the extent Section 17516c excepted the orders of Regional**770 Water Boards from the definition of "executive orders," Section 17516c was unconstitutional in that it expressly contravened [article XIII B, section 6](#). The court ordered the Commission to set aside its order affirming its executive director's rejections of the four test claims and to consider these claims on the merits.

In granting in part County/Cities' petitions for a writ of mandate, the trial court found the Commission, "though it proceeded as required by statutory law, as it was constrained to do, has not proceeded as required by superior constitutional law. ([Code Civ. Proc., \[§ 11094.5](#), subd. (a).) The question whether [County/Cities] state valid claims for reimbursement must be remanded to [C]ommission, which is ordered to consider [these] claims on their merits. [Citations.]"

***911** A preemptory writ of mandate was issued on May 24, 2005. Judgment was entered the same date. This appeal and cross-appeal followed.

STANDARD OF REVIEW

[\[5\]\[6\]\[7\]\[8\]](#) "The standard for reviewing a judgment on the pleadings is settled: 'A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired. The rules governing demurrers apply. [Citation.] The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice. [Citations.] On review we must determine if the complaint states a cause of action as a matter of law.' [Citation.] 'We review the complaint de novo to determine whether [it] alleges facts sufficient to state a cause of action under any legal

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theory. [Citation.]’ [Citation.]” (*McCormick v. Travelers Ins. Co.* (2001) 86 Cal.App.4th 404, 408, 103 Cal.Rptr.2d 258.)

[9] “In reviewing the trial court’s ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407, 216 Cal.Rptr. 782, 703 P.2d 122.) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court’s decision but may make its own determination. (*ibid.*)” (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 394, 69 Cal.Rptr.2d 231.)

DISCUSSION

1. Defense of Statute of Limitations Forfeited

[10] On appeal for the first time, the Commission asserts the challenge of County/Cities to the constitutionality of Section 17156c is barred by the 90-day limitation period of [section 341.5 of the Code of Civil Procedure](#), which governs the timeliness of actions challenging the constitutionality of state funding for municipalities, school districts, special districts, and local agencies.

[Code of Civil Procedure section 341.5](#) provides: “Notwithstanding any other provision of law, any action or proceeding in which a county, city, city and county, school district, special district, or any other local agency is a plaintiff or petitioner, that is brought against the State of California challenging the constitutionality of any statute relating to state funding for counties, cities, cities and counties, school districts, special districts, or other local agencies, shall be commenced within 90 days of the effective date of the *912 statute at issue in the action. For purposes of this section, ‘State of California’ means the State of California itself, or any of its agencies, departments, commissions, boards, or public officials.” (Added by **771 Stats.1994, ch. 155 (Assem. Bill No. 860), § 1, eff. July 11, 1994; amended by Stats.1994, ch. 156 (Sen. Bill No. 2127), § 1, eff. July 11, 1994.)

The Commission argues the constitutional challenge to Section 17156c is time-barred, because: “[Government Code section 17500 et seq.](#), including

[section 17516](#), relates to state funding for counties and cities relative to state-mandated local programs.... [S]ection 17516 was enacted in 1984 and became effective January 1, 1985. The petition in this case challenging [section 17516](#) as unconstitutional was filed April 28, 2004[,]” which was more than 90 days after the effective date of [section 17516](#).

[11][12] The time-bar of a statute of limitations may be raised by demurrer “[w]here the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, [for the reason that] it fails to state facts sufficient to state a cause of action. [Citation.]” (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, 30 Cal.Rptr.3d 588.) Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer. (See e.g., *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581, 15 Cal.Rptr. 641, 364 P.2d 473; *Davies v. Krasna* (1975) 14 Cal.3d 502, 508, 121 Cal.Rptr. 705, 535 P.2d 1161; *Mitchell v. County Sanitation District No. 1 of Los Angeles County* (1957) 150 Cal.App.2d 366, 371, 309 P.2d 930; see also, [Code Civ. Proc., § 458.](#))

As the Commission concedes, it did not raise “[[Code of Civil Procedure](#)] [section 341.5](#) as an affirmative defense in its pleadings in the trial court.” This omission signifies that the Commission therefore has forfeited any right it may have had to assert [section 341.5](#) to bar, as untimely, the claims of County/Cities to the constitutionality of Section 17156c.

For a contrary conclusion, the Commission argues “the statute of limitations to challenge an administrative action is jurisdictional and should not be considered waived. (*United Farm Workers of America v. Agricultural Labor Relations Board* (1977) 74 Cal.App.3d 347, 350, 141 Cal.Rptr. 437; *Tielsch v. City of Anaheim* (1984) 160 Cal.App.3d 576, 578, 206 Cal.Rptr. 740; *Donnellan v. City of Novato* (2001) 86 Cal.App.4th 1097, 1103, 103 Cal.Rptr.2d 882.) If a time limit in a mandamus proceeding is held to be jurisdictional, estoppel or waiver cannot extend the time. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666, 674, 125 Cal.Rptr. 757, 542 P.2d 1349.)”

*913 The Commission’s fall-back position is that this court should exercise its discretion to determine the applicability of the time-bar, because this “issue is a

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question of law rather than of fact” and “[t]his matter affects the public interest since [County/Cities] are seeking reimbursement from the state for costs incurred to comply with a permit” issued by the LA Regional Water Board. In other words, “taxpayers statewide could unjustly suffer the consequences of funding a local program if [Code of Civil Procedure section 341.5](#) is not considered and ... [section 17516](#) is held to be unconstitutional.” As authority, the Commission relies primarily on [City of Sacramento v. State of California \(1990\) 50 Cal.3d at pages 64-65, 266 Cal.Rptr. 139, 785 P.2d 522](#) [where issue of law rather than fact raised, public-interest exception governs over collateral estoppel bar] and [Connell v. Superior Court, supra, 59 Cal.App.4th at pages 387-388, 396-397, 69 Cal.Rptr.2d 231](#) [public interest exception applicable to allow review of question of law as to whether recycled waste water regulation constituted reimbursable state mandate].)

Neither of the Commission's positions is successful. In the first instance, the time-****772** bar of [section 341.5 of the Code of Civil Procedure](#) applies to a challenge to the constitutionality of any statute relating to state funding for counties and other local governmental entities, *not* to a challenge to an action by an administrative agency. As for the second, neither [City of Sacramento](#) nor [Connell](#) stand for the proposition that the bar of the applicable statute of limitations may be raised for the first time on appeal.

Additionally, the Commission's characterization of the public interest to be served is a non sequitur. If [section 17516](#) were in fact unconstitutional, it does not follow that “taxpayers statewide could *unjustly* suffer the consequences of funding a local program[.]” (Italics added.) How could such funding result in injustice when any requirement of reimbursement to local governments would be under the constitutional compulsion of [article XIII B, section 6](#)?

2. Existence of Federal or State Mandate Issue for the Commission

[13] It is undisputed that a federal mandate is not subject to the subvention requirement of [article XIII B, section 6](#) for a state mandate. Accordingly, if the Permit, including the subject two obligations thereunder, constitutes a federal mandate, the constitutionality of Section 17516c is not implicated, and thus, no

issue as to its constitutionality is before this court to address on the merits. (See [People ex rel. Lynch v. Superior Court \(1970\) 1 Cal.3d 910, 912, 83 Cal.Rptr. 670, 464 P.2d 126](#) [“The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.”].)

***914** In its amicus curiae brief, LA Regional Water Board takes the position that, as a matter of law, Section 17516c is consistent with [article XIII B, section 6](#) (and thus not unconstitutional) “to the extent Division 7, Chapter 5.5 (commencing with [Water Code section 13370](#))” simply implements federal mandates under the Clean Water Act ([33 U.S.C. § 1342\(b\)](#)). The water boards, i.e., the State Water Board and its Regional Water Boards, implement the federal permit program under Chapter 5.5, which the California Legislature enacted to by-pass administration of such program directly by the federal Environmental Protection Agency.

LA Regional Water Board takes the further position that the federal mandate nature of its NPDES permits remains constant although it exercises discretion to control the discharge of pollutants through municipal stormwater programs not appearing in federal regulations. Specifically, LA Regional Water Board argues: “When a state [Regional Water Board] issues an NPDES permit requiring municipalities to inspect facilities as a means of controlling their discharge of pollutants, this is not shifting state responsibilities onto local agencies [, because f]ederal law imposes inspection requirements upon municipal permittees.”

As for the trash receptacle obligation, LA Regional Water Board points out the Clean Water Act allows the use of programs to control discharge of pollutants in connection with a municipal stormwater permit and argues one such program under the Permit is the ability of “municipalities to employ ‘Best Management Practices’ (BMPs) to ... attain water quality standards.” It identifies “[t]he Permit's trash receptacle requirement as one such [BMP].”

It further argues that the trash receptacle obligation cannot be deemed a state-mandated program, because it is not “an absolute requirement. Any permittee may petition the Regional Water Board to substitute another equally effective BMP for one included within the Permit.[] [For instance, i]f a permittee demonstrates that ****773** a pre-existing program or level of

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service will be equally effective in controlling pollution, it may seek to substitute that program.”

We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances. As explained ante, the existence of a federal, as contrasted with a state, mandate is not easily ascertainable.

By letter, we invited the parties and LA Regional Water Board to address whether an obligation under an NPDES permit by a Regional Water Board can qualify as a state mandate within the meaning of [article XIII B, section 6](#), assuming an NPDES permit itself qualified as a federal mandate, and if so, ***915** why each of the subject two obligations does or does not constitute a state mandate. We have received their responses.

a. “NPDES” Permits Issued by Regional Water Boards

“California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. ([City of Burbank v. State Water Resources Control Bd.](#) (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*Burbank*); [Building Industry Assn. of San Diego County v. State Water Resources Control Board](#) (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128; [Communities for a Better Environment v. State Water Resources Control Bd.](#) (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76; [WaterKeepers Northern California v. State Water Resources Control Bd.](#) (2002) 102 Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389.)

For purposes of this case, the important point is described by the California Supreme Court in [Burbank](#): “Part of the federal Clean Water Act [[33 U.S.C. § 1251 et seq.](#)] is the National Pollutant Discharge Elimination System (NPDES), ‘[t]he primary means’ for enforcing effluent limitations and standards under the Clean Water Act. ([Arkansas v. Oklahoma](#) [(1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239].) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. ([33](#)

[U.S.C. § 1342\(a\) & \(b\).](#)) In California, wastewater discharge requirements established by the regional [water] boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)” ([Burbank, supra](#), 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

“California’s Porter-Cologne Act ([Wat.Code, § 13000 et seq.](#)) establishes a statewide program for water quality control. Nine regional [water] boards, overseen by the State [Water] Board, administer the program in their respective regions. ([Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.](#)) [Water Code sections 13374 and 13377](#) authorize the Regional [Water] Board to issue federal NPDES permits for five-year periods. ([33 U.S.C. § 1342, subd. \(b\)\(1\)\(B\).](#))” ^{FN5} ****774*916**([City of Rancho Cucamonga v. Regional Water Quality Control Bd.](#) (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In a related case, Division Five of this District upheld the authority of LA Regional Water Board to issue the Permit here. ([County of Los Angeles v. State Water Resources Control Board](#) (2006) 143 Cal.App.4th 985, 999-1000, 50 Cal.Rptr.3d 619 [holding the nine Regional Water Boards authorized under state law to issue NPDES permits] review den.)

^{FN5}. In pertinent part, [article XIII B, section 6](#), provides: “[T]he Legislature may, but need not, provide a subvention of funds for the following mandates: [¶] ... [¶] (3)Legislative mandates enacted prior to January 1, 1995, or executive orders ... initially implementing legislation enacted prior to January 1, 1975.” ([Art. XIII B, § 6](#), subd. par. (a)(3).) LA Regional Water Board argues that subvention under [article XIII B, section 6](#), is not required as to the Permit, because it is an executive order implementing the Porter-Cologne Act, ([Wat. Code, § 13020 et seq.](#)) which is legislation enacted in 1969. This argument fails for the reason that the executive order resulting in the 2001 Permit was not one “initially” implementing such pre-1975 legislation. Equally unsuccessful is LA Regional Water Board’s apparent argument that Section 17516c should be deemed constitutional for the reason that “most of” the Porter-Cologne Act (Division 7) was enacted prior to 1975. The fatal fallacy of this position is that the exclusion of

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Section 17516c applies to all orders issued pursuant to Division 7 *regardless* of the date the statute in question was enacted.

b. *Potential Federal and State Components of NPDES Permit*

As expected, LA Regional Water Board contends that as in the case of NPDES “permits as a whole, the individual conditions of an NPDES permit are federally required to meet the mandates of the Clean Water Act.” It argues: “The Permit is federally required. The conditions within it are federally required to implement the Clean Water Act’s mandates. The two cannot be separated into a ‘federal’ permit with ‘state’ conditions. [Citation.]”

County/Cities respond, contrariwise, that “[a]n NPDES permit can contain both federal and non-[federal requirements.” As case authority, they rely primarily on [Burbank, supra, 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862](#). Our Supreme Court concluded that under the supremacy clause of the federal Constitution, a Regional Water Board must comply with the federal Clean Water Act in issuing an NPDES permit. (*Id.* at pp. 626-627, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Nonetheless, “[u]nder the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not ‘less stringent’ than those set out in the Clean Water Act [citation.]” (*Id.* at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Court thus acknowledged in [Burbank](#) that an NPDES permit may contain terms federally mandated and terms exceeding federal law. (See also, [Burbank, supra, at pp. 618, 628, 26 Cal.Rptr.3d 304, 108 P.3d 862](#).) County/Cities also point out that the potential for non-federally mandated components of an NPDES permit is acknowledged under both federal law ^{FN6} and state law. ^{FN7}

^{FN6}. In this regard, they rely on this federal statute: “Except as expressly provided in this Act [33 USCS §§ 1251 et seq.], nothing in this Act [33 USCS §§ 1251 et seq.] shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if

an effluent limitation, or other limitation ... is in effect under this Act [33 USCS §§ 1251 et seq.], such State [, etc.] ... may not adopt or enforce any effluent limitation or other limitation ... which is less stringent than the effluent limitation, or other limitation....” (33 U.S.C. § 1370.)

^{FN7}. On this point, they rely on this statutory provision: “Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” (Wat.Code, § 13377.)

****775 *917** Additionally, County/Cities argue “that an obligation imposed on a municipality arises as a result of a federal law or program does not, in and of itself, render that obligation a federal mandate.” Rather, they assert that to qualify as a federal mandate, “federal law itself must impose the obligation upon the municipality.” They point out [Government Code section 17556](#) provides that costs flowing from a federal mandate may be subject to subvention if such costs exceed such mandate. ^{FN8} They also cite two cases in support of their position.

^{FN8}. [Government Code section 17556](#), subdivision (c), provides: “The commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds ... [¶] ... [¶][t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.”

In [San Diego Unified School Dist. v. Commission on](#)

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State Mandates (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, our Supreme Court concluded the costs incurred by school districts in holding mandatory expulsion hearings under Education Code section 48915 were state mandates subject to subvention under article XIII B, section 6. The court explained that expulsion was mandated under the Education Code, rather than federal law, and thus, the fact the costs were incurred to comport with federal due process, a federal mandate, was not controlling. (San Diego Unified School Dist. v. Commission on State Mandates, supra, at pp. 880-882, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In the other case, Hayes v. Commission on State Mandates, supra, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the appellate court concluded that the finding a mandate was federal turned on whether “the state freely chose to impose the costs upon the local agency as a means of implementing a federal program” and that under these circumstances, “the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.” (Id. at p. 1594, 15 Cal.Rptr.2d 547.)

c. Existence of State Mandates Matter for the Commission

A review of the pleadings and the matters that may be judicially noticed (Evid.Code, §§ 451, 452, 459) leads to the inescapable conclusion that whether the two obligations in question constitute federal or state mandates presents factual issues which must be addressed in the first instance by the *918 Commission if Section 17516c were found to be unconstitutional. Resolution of the federal or state nature of these obligations therefore is premature and, thus, not properly before this court.

In its response, the Commission argues that if this court determines Section 17516c is unconstitutional, the subject test claims “should be remanded to ... Commission to ‘decide in the first instance whether a local agency is entitled to reimbursement under [article XIII B.] section 6[.]’ (Lucia Mar Unified School District v. Honig [, supra,] 44 Cal.3d 830, 837 [244 Cal.Rptr. 677, 750 P.2d 318]; Gov.Code, § 17552.)”

The Commission stated that on such remand, it would

apply the following cases in determining whether state mandates exist: City of Sacramento v. State of California, supra, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, which sets forth various factors and criteria for determining whether the federal program imposes a mandate on the state; **776Hayes v. Commission on State Mandates, supra, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, which it contends “provides guidance on whether the state, in turn, has mandated a federal program on the local governments”; Long Beach Unified Sch. Dist. v. State of California, supra, 225 Cal.App.3d 155, 275 Cal.Rptr. 449, which analyzes whether the state-mandated activities exceed federal requirements; and San Diego Unified School Dist. v. Commission on State Mandates, supra, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, which also provides guidance on this same issue.

3. “Executive Order” under Revenue and Taxation Code Not Probative

The Commission contends the exclusion of orders of the Regional Water Boards from the definition of “executive order” in Section 17516c does not contravene article XIII B, section 6, because section 17516 derives from the definition of “executive order” in Revenue and Taxation Code section 2209, ^{FN9} of which the voters were presumed to have known to exist *919 when they adopted Proposition 4 (i.e., art. XIII B, § 6) in 1979, and thus, Proposition 4 intended to endorse and continue such exclusion from the definition of “executive order” which was later carried over to Section 17516c. We disagree.

FN9. Revenue and Taxation Code section 2209(c) provides: “ ‘Executive order’ means any order, plan, requirement, rule or regulation issued ... [¶] ... [¶][b]y any agency ... of state government; provided that the term ‘executive order’ shall not include any order ... issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

“It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned discharges which mandate major waste water treatment fa-

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cility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.

“ ‘Major’ means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.” (Rev. & Tax Code, § 2209(c); added by Stats.1974, ch. 457, p. 1079, § 2 and amended by Stats.1975, ch. 486, p. 998, § 2, eff. Sept. 2, 1975.)

We further disagree with the Commission's reliance on a presumption that when the voters adopted Proposition 1A in November 2004, they knew of, and thus, necessarily approved of Section 17516c's exclusion of orders of Regional Water Boards from the definition of “executive order.”

Our focus, instead, must be on the import of [article XIII B, section 6](#), not on the pre-constitutional scheme for subvention of funds to local agencies of which [section 2209 of the Revenue and Taxation Code](#) was part. As our Supreme Court instructs: “In construing the meaning of the constitutional provision (i.e., [article XIII B, section 6](#)), our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted [article XIII B](#) in 1979. To determine this intent, we must look to the language of the provision itself. [Citation.]” (*County of Los Angeles v. California, supra*, 43 Cal.3d 46, at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

The subvention requirement of [article XIII B, section 6](#) applies “[w]henever the Legislature or any state agency mandates a new program or higher level of service....” The all-encompassing “any state agency” language defeats any perceived presumption that the electorate intended to incorporate into [article XIII B, section 6](#) the exclusion of a particular state agency, e.g., the Regional Water Board, from its subvention requirement.

****777** 4. *Section 17516c Unconstitutional as to Regional Water Boards*

LA Regional Water Board argues in its amicus brief that Section 17516c is constitutional for the additional reason that its exemption from the subvention requirement of [article XIII B, section 6](#), is “appropriate because the Water Boards regulate water pollution with an even hand. Whether the pollution originates from a local public agency or a private industrial source, the Water Boards must assure their permits protect water quality consistent with state and federal law.”

This argument is not persuasive. Whether the permit in question issued by Regional Water Boards governs both public and private pollution dischargers to the same extent presents factual issues not yet resolved. In any event, the applicability of permits to public and private discharges does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under [article XIII B, section 6](#). (See *920 *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 530-531, 534, 537, 541, 234 Cal.Rptr. 795 [executive orders for protective fire clothing and equipment state mandated even if record, which was incomplete, revealed private sector firefighters also subject to the executive orders].)

In contrast, the constitutional infirmity of Section 17516c is readily apparent from its plain language that the definition of “ ‘[e]xecutive order’ does not include *any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board* pursuant to Division 7 (commencing with [Section 13000](#)) of the Water Code.” (§ 17516c, italics added.) This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of [article XIII B, section 6](#) that subvention of funds is required “[w]henever ... *any state agency* mandates a new program or higher level of service on any local government” ^{FN10} (§ 17516c, italics added.) We therefore conclude that Section 17516c is unconstitutional to the extent it excludes “any order ... issued by ... any regional water ... board pursuant to Division 7 (commencing with [Section 13000](#)) of the Water Code” from the definition of “ ‘executive order.’ ”

^{FN10}. At oral argument, when asked to identify the public policy or other reason that would be served by exempting Regional

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Water Boards from the constitutional subvention requirement, counsel for LA Regional Water Board responded exemption is warranted, because water is an important concern. No one can quarrel with the fact water plays an important role in California. Nonetheless, this reason does not compel the conclusion that an exemption should be carved out for Regional Water Boards as contrasted with those state agencies which regulate other important state interests.

This conclusion leads to the further conclusion that whether one or both of the subject two obligations constitutes a state mandate necessitating subvention of funds under [article XIII B, section 6](#) is an issue that must in the first instance be resolved by the Commission. Accordingly, we uphold the trial court's issuance of a writ of mandate directing the Commission to vacate its decisions affirming its executive director's rejection of the four test claims and to consider these claims on the merits.

5. Cross-Appeal Moot

County/Cities filed a protective cross-appeal from the judgment to the extent the trial court dismissed the portions of their writ of mandate petitions against LA Regional Water Board. ^{FN11} The threshold ****778** issue raised is whether County/Cities are entitled to proceed directly in superior court against LA ***921** Regional Water Board for reimbursement relief if they are statutorily precluded from obtaining a hearing before the Commission.

^{FN11}. The trial court sustained the demurrer to the fourth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the inspection and trash receptacle obligations. The court granted its own motion for judgment on the pleadings without leave to amend as to LA Regional Water Board on the first cause of action for a writ of mandate directing reimbursement; the second cause of action for declaratory relief; and the fifth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the subject obligations.

County/Cities' position is they are entitled to a hear-

ing on the merits of their claims before either the Commission or LA Regional Water Board. If this court determines the Commission's jurisdiction is exclusive, the Commission must afford them a hearing and determine the merits of their subvention claim under [article XIII B, section 6](#). If not exclusive, County/Cities must be allowed to seek relief directly against Regional Water Board before the superior court.

LA Regional Water Board argues County/Cities have no right to seek subvention relief from a Regional Water Board, because reimbursement of costs mandated by state must be pursued through the statutory subvention scheme, which is "the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by [Section 6 of Article XIII B...](#)" ([Gov.Code, § 17552](#).) Their claims thus must be addressed exclusively to the Commission in first instance.

The cross-appeal against LA Regional Water Board is moot in light of our above conclusion that the Commission is to hear and determine the merits of the County/Cities' test claims. We therefore do not reach the merits of the issues raised in the cross-appeal.

CONCLUSION

Section 17516c is unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of "executive orders" for which subvention of funds to local governments for carrying out state mandates is required pursuant to [article XIII B, section 6](#). The trial court therefore properly issued a writ of mandate directing the Commission to resolve the four test claims on the merits without reference to Section 17516c. In light of this conclusion, we need not, and therefore do not, address the issues raised on the now moot cross-appeal.

***922** DISPOSITION

The judgment is affirmed. Each party shall bear its own costs on appeal and cross-appeal.

We concur: [KLEIN](#), P.J., and [CROSKEY](#), J.
 Cal.App. 2 Dist., 2007.

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170 Cal.App.4th 1355, 89 Cal.Rptr.3d 93, 241 Ed. Law Rep. 255, 09 Cal. Daily Op. Serv. 1588, 2009 Daily Journal D.A.R. 1816

(Cite as: 170 Cal.App.4th 1355, 89 Cal.Rptr.3d 93)

Court of Appeal, Third District, California.
DEPARTMENT OF FINANCE, Plaintiff and Appellant,
v.
COMMISSION ON STATE MANDATES, Defendant and Respondent.
No. C056833.

Feb. 6, 2009.

Background: State Department of Finance petitioned for a writ of administrative mandamus to overturn decision of Commission on State Mandates that the Public Safety Officers Procedural Bill of Rights Act (POBRA) constituted a state-mandated program for school districts and special districts that employed peace officers. The Superior Court, Sacramento County, No. 07CS00079, Lloyd G. Connelly, J., denied writ. Department of Finance appealed.

Holding: The Court of Appeal, Butz, J., held that POBRA did not constitute state-mandated program for school districts and special districts that was reimbursable under state constitutional provision.

Reversed.

Scotland, P.J., concurred and filed opinion.

West Headnotes

[1] States 360 🔑111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

If a local government participates voluntarily, i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement under state constitution. West's Ann.Cal. Const. Art. 13B, § 6.

[2] States 360 🔑111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

As to cities, counties, and such districts that have as an ordinary, principal, and mandatory duty the provision of policing and firefighting services within their territorial jurisdiction, new statutory duties that increase the costs of police and firefighter services are prima facie reimbursable under state constitutional provision requiring state to bear the costs of new mandates on local government; this is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. West's Ann.Cal. Const. Art. 13B, § 6.

[3] Schools 345 🔑148(1)

345 Schools

345II Public Schools

345II(L) Pupils

345k148 Nature of Right to Instruction in General

345k148(1) k. In General. Most Cited

Cases

A school district has an analogous basic and mandatory duty to educate students.

[4] States 360 🔑111

360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary for purposes of determining if state reimbursement under state constitutional provision requiring state to bear the costs of new mandates on local government. West's Ann.Cal. Const. Art. 13B, § 6.

[5] States 360 🔑111

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360 States

360III Property, Contracts, and Liabilities

360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

Public Safety Officers Procedural Bill of Rights Act (POBRA) did not constitute a state-mandated program for school districts and special districts that was reimbursable under state constitutional provision requiring state to bear the costs of new mandates on local government; the districts were permitted by statute, but not required, to employ peace officers who supplemented the general law enforcement units of cities and counties. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 3300 et seq. See Cal. Jur. 3d, Schools, § 8; Cal. Jur. 3d, State of California, § 102; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Tax, §§ 120, 121.**94 Edmund G. Brown, Jr., Attorney General, Christopher E. Krueger, Assistant Attorney General, Douglas J. Woods, Jill Bowers and Jack Woodside, Deputy Attorneys General, for Plaintiff and Appellant.

Camille Shelton, Chief Legal Counsel, for Defendant and Respondent.

BUTZ, J.

*1357 Article XIII B, section 6 of the California Constitution ^{FN1} requires the state to **95 BEAR THE COsts of new mandates on local government. However, if a local government entity voluntarily undertakes the costs, they do not constitute a reimbursable state mandate. (See, e.g., San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 884-887, 16 Cal.Rptr.3d 466, 94 P.3d 589 (San Diego Unified School Dist.)); *1358 Department of Finance v. Commission on State Mandates (Kern High School Dist.) (2003) 30 Cal.4th 727, 742-745, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (Kern High School Dist.).) The Public Safety Officers Procedural Bill of Rights Act (POBRA), ^{FN2} initially enacted in 1976 (Stats.1976, ch. 465, § 1, p. 1202), requires state and local government agencies that employ peace officers to provide them with procedural rights and protections when they are subjected to investigation, interrogation or discipline. (Gov.Code, § 3300 et seq.)

FN1. Article references are to the California

Constitution.

Article XIII B, section 6, subdivision (a), in pertinent part, states as follows: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, [subject to specified exceptions].”

FN2. The statute's commonly used name is the Peace Officers Bill of Rights Act and the acronym POBRA is one used by the Supreme Court. (See Mays v. City of Los Angeles (2008) 43 Cal.4th 313, 317 & fn. 1, 320, 74 Cal.Rptr.3d 891, 180 P.3d 935.)

In this case plaintiff state Department of Finance (Finance) petitioned for a writ of administrative mandamus to overturn the decision of defendant Commission on State Mandates (the Commission) that POBRA constitutes a state-mandated program for school districts and special districts that employ peace officers. The superior court denied the petition. We decide POBRA is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties. The judgment denying Finance's petition for writ of administrative mandamus is reversed.

FACTUAL AND PROCEDURAL BACKGROUND

In 1995, the City of Sacramento filed a test claim with the Commission pursuant to the versions of Government Code sections 17521 and 17560 then in effect, seeking reimbursement under article XIII B, section 6, of the costs incurred in complying with the POBRA procedural requirements. In 1999, pursuant to the version of Government Code section 17551 then in effect, the Commission held a public hearing on the test claim and issued a statement of decision determining that certain POBRA procedural protections exceeded federal and state constitutional due process requirements and imposed reimbursable

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state-mandated costs upon cities, counties, school districts and special districts under [article XIII B, section 6](#). In 2000, pursuant to [Government Code section 17557](#), the Commission adopted parameters and guidelines for the reimbursement of the costs incurred by those local government entities in providing the POBRA procedural protections determined to be state-mandated.

In 2005, the Legislature enacted [Government Code section 3313](#), directing the Commission to “review its statement of decision regarding the [POBRA] test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in [San Diego Unified School Dist. v. Commission of State Mandates](#) (2004) 33 Cal.4th 859], 16 Cal.Rptr.3d 466, 94 P.3d 589] and other applicable court decisions.” ([Gov.Code, § 3313](#), added by Stat.2005, ch. 72, § 6, eff. July 19, 2005.)

****96 *1359** Pursuant to [Government Code section 3313](#), on April 26, 2006, the Commission held a public hearing. The only pertinent factual “testimony” at the hearing was an assertion that most school districts do not employ peace officers: “Of the approximately 1,200 local educational agencies receiving state school safety grant funding, only approximately 140 of those reported using the funding for hiring peace officers.” After the matter was submitted, the Commission adopted a statement of decision reconsidering its 1999 statement of decision. The Commission decided that POBRA imposes, consistent with [San Diego Unified School Dist., supra, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589](#), a partial, reimbursable state-mandated program on cities, counties, school districts, and special districts identified in [Government Code section 3301](#) that employ peace officers. As to the school districts and special districts, the Commission reasoned as follows:

“For the reasons below, the Commission finds that the [POBRA] legislation constitutes a state-mandated program for school districts and the special districts identified in [Government Code section 3301](#) that employ peace officers.

“Under a strict application of the [City of Merced v. State of California](#) (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642] case, the requirements of the [PO-

BRA] legislation would not constitute a state-mandated program within the meaning of [article XIII B, section 6](#) for school districts and the special districts that employ peace officers ‘for the simple reason’ that the ability of the school district or special district to decide whether to employ peace officers ‘could control or perhaps even avoid the extra costs’ of the [POBRA] legislation. But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for [POBRA] to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court [in [Baggett v. Gates](#) (1982) 32 Cal.3d 128, 139-141, 185 Cal.Rptr. 232, 649 P.2d 874] concluded that the peace officers identified in [Government Code section 3301](#) of the [POBRA] legislation provide an ‘essential service’ to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.

“In addition, in 2001, the Supreme Court [in [In re Randy G.](#) (2001) 26 Cal.4th 556, 562-563, 110 Cal.Rptr.2d 516, 28 P.3d 239] determined that school districts, apart from education, have an ‘obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.’ The court further held that California fulfills its obligations under the safe schools provision of the Constitution ([Cal. Const., art. I, § 28, *1360](#) subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline. The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in [San Diego Unified \[School Dist.\]](#) to question the application of the [City of Merced](#) case.

“[] ... []

“Thus, as indicated by the Supreme Court in [San Diego Unified \[School Dist., supra, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589\]](#), a finding that the [POBRA] legislation does not constitute a state-mandated program for school districts and special districts identified in [Government Code section 3301](#) would conflict with past decisions like ****97**[Carmel Valley \[Fire Protection Dist. v. State](#) (1987) 190

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[Cal.App.3d 521, 537, 234 Cal.Rptr. 795](#)], where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that ‘[p]olice and fire protection are two of the most essential and basic functions of local government.’ The constitutional definition of ‘local government’ for purposes of [article XIII B, section 6](#) includes school districts and special districts. ([Cal. Const., art. XIII B, § 8](#)], subd. (d)].)

“Accordingly, the Commission finds that [POBRA] constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that [POBRA] constitutes a state-mandated program for the special districts identified in [Government Code section 3301](#). These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.” (Fns. omitted.)

In January 2007, Finance petitioned for a writ of administrative mandamus to overturn the decision of the Commission as to school districts and special districts permitted but not required to hire peace officers. The Commission answered, opposing the petition. After oral argument the matter was submitted. Thereafter, on July 3, 2007, the trial court issued its ruling, denying the petition on the following essential reasoning:

“As a practical matter, the establishment of a police department and the employment of peace officers by school districts, community college districts and other local agencies is not an optional program: when the districts and agencies decide to exercise their statutory authority to employ peace officers, they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement, such as a large urban school district’s need for security and police officers to supplement city *1361 police or a municipal water district’s need for park rangers with the authority and powers conferred upon peace officers to issue citations and make arrests in district recreational facilities. ([Pen.] Code, § 830.34, *subd. (d)* [subd. (d) added by] & [Wat.Code, \[§ 71341.5](#), added by] Stats.2004, ch. 799, [§§ 1 & 2]; [see] Sen. Com. on Public Safety, analysis of Assem. Bill No. 1119 [(2004 Reg. Sess.)]

[granting ‘essential authority’ to municipal water districts to employ park rangers with the powers conferred on peace officers by [Pen.Code, § 830.34, subd. \(d\)](#)], [italics added].) Rather, the specific security and law enforcement needs of the districts and agencies compel their decisions to employ peace officers and prevent them from controlling or avoiding the costs of providing [POBRA] procedural protections, such as student misconduct that jeopardizes the safe, secure and peaceful learning environment for other students may provide the practical compulsion for a school district to pursue discretionary expulsion proceedings and subject the district to the costs of mandated hearing procedures. (See [San Diego Unified School Dist., supra, 33 Cal.4th at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.](#)) In marked contrast, the city in [City of Merced](#) had options to acquire property by eminent domain, by purchase or by other means and was not forced to proceed by eminent domain with its required payment for business goodwill, while the school districts in [Kern High School Dist.](#) could continue to operate and educate their students without participating in specified educational grant programs and without incurring the mandatory notice and agenda costs associated with the grant programs.

****98** “To the extent that school districts, community college districts and other local government agencies do exercise discretion in deciding to employ peace officers identified in [Government Code section 3301](#), the decisions do not involve the type of discretion that would or should preclude reimbursement of state-mandated program costs under [\[article XIII B.\] section 6](#). When the districts and agencies decide to use their specific statutory authorities and powers to employ peace officers, they determine how to use the authorities and powers to fulfill their existing obligations and functions, not to undertake new program activities. If such discretionary decisions by the districts and agencies are found to foreclose the districts and agencies from obtaining reimbursement of the [POBRA] costs triggered by their employment of peace officers, the state would be able to shift financial responsibility for carrying out new state-mandated program activities to the districts and agencies, in contravention of the intent underlying [\[article XIII B.\] section 6](#) and [\[Government Code\] section 17514](#). ([San Diego Unified School Dist., supra, 33 Cal.4th at pp. 887-888](#)], [16 Cal.Rptr.3d 466, 94 P.3d 589](#)].) Similarly, as the California Supreme Court

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observed in *San Diego Unified School Dist.*, the Court of Appeal in *Carmel Valley [Fire Protection Dist. v. State]*, *supra*, 190 Cal.App.3d 521[, 234 Cal.Rptr. 795], apparently did not contemplate that discretionary decisions by local fire protection agencies regarding the number of firefighters the agencies needed to employ *1362 to fulfill their essential fire-protection functions would foreclose reimbursement of the costs incurred by the agencies for state-mandated protective clothing and safety equipment; such foreclosure of reimbursement, based on the agencies' discretion to limit the number of firefighters they employed and thereby control or even avoid the mandated costs, would contravene the intent underlying [article XIII B,] section 6 and [Government Code] section 17514. ([*San Diego Unified School Dist.*, *supra*,] 33 Cal.4th at pp. 887-888[, 16 Cal.Rptr.3d 466, 94 P.3d 589].) (Fn. omitted.)

Finance appeals from the judgment denying the petition.

DISCUSSION

Finance contends that the trial court erred in upholding the Commission's determination that, as to districts not compelled by statute to employ peace officers, the POBRA requirements are a reimbursable state mandate.^{FN3} Finance argues that the judgment rests on the insupportable legal conclusion that these districts are, as a practical matter, compelled to exercise their authority to hire peace officers.^{FN4} We agree.

^{FN3}. [Government Code section 17514](#) states: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)."

^{FN4}. Whether a statute imposes a reimbursable state mandate is said to be a question of law. (E.g., *County of San Diego v. State of*

California (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) In any event, that is the way the parties have litigated the issue in this case.

I. Case Law on Incurring Costs Voluntarily

The issue here principally turns on three leading opinions, commencing with **99*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642 (*City of Merced*). *City of Merced* holds that an amendment of the eminent domain law requiring compensation for business goodwill is not a reimbursable mandate under former [Revenue and Taxation Code section 2231](#), the antecedent of [article XIII B, section 6](#). (*City of Merced, supra*, 153 Cal.App.3d at p. 783, 200 Cal.Rptr. 642.) The *City of Merced* rationale is that because the city was not required to obtain property by eminent domain, the program permitting use of that power was voluntary, and the requirement of compensation for business goodwill accordingly was not a mandate. "[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of *1363 eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost." (*Ibid.*)

City of Merced is critiqued in the second case of the triad, *Kern High School Dist.*, *supra*, 30 Cal.4th at pages 737-740, 134 Cal.Rptr.2d 237, 68 P.3d 1203. In *Kern High School Dist.*, the Commission decided that two statutes requiring school site councils and advisory committees for certain educational programs to provide notice of meetings and to post agendas for those meetings constituted a reimbursable state mandate under [article XIII B, section 6](#). The Supreme Court held that the statutes do not constitute a reimbursable state mandate, as districts were neither legally compelled nor as a practical matter compelled to participate in the programs. (*Id.* at pp. 745, 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In *Kern High School Dist.*, the Department of Finance asserted in its brief that based upon the language of [article XIII B, section 6](#), and on the *City of*

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Merced. “a reimbursable state mandate arises only if a local entity is ‘required’ or ‘commanded’-that is, legally compelled-to participate in a program (or to provide a service) that, in turn, leads unavoidably to increasing the costs incurred by the entity.” (Kern High School Dist., *supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The Supreme Court said, “[T]he core point articulated by the court in City of Merced is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate....” (*Id.* at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The high court decided that, with one possible exception, the programs in issue were not legally compelled and that the possible exception was not a mandate because the state supplied sufficient funding to cover the additional costs. (*Id.* at pp. 743-748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

The reimbursable mandate proponents argued that the legal compulsion standard was too narrow and that they should also be reimbursed because they had been compelled “as a *practical* matter” to participate in the programs. (Kern High School Dist., *supra*, 30 Cal.4th at p. 731, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The Supreme Court summarized its response to that claim as follows: “Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion-for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program-claimants here faced no such practical compulsion. Instead, although claimants argue that they have had ‘no true option or choice’ other than to ****100** participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have ***1364** found the benefits of various funded programs ‘too good to refuse’-even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (*Ibid.*)

“In sum, the circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate.

Contrary to the situation that we described in City of Sacramento [v. State of California (1990)] 50 Cal.3d 51[, 266 Cal.Rptr. 139, 785 P.2d 522], a claimant that elects to discontinue participation in one of the programs here at issue does not face ‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences (*id.* at p. 74[, 266 Cal.Rptr. 139, 785 P.2d 522]), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6.” (Kern High School Dist., *supra*, 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

The last case of the triad that governs this case is San Diego Unified School Dist., *supra*, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589. In San Diego Unified School Dist., the key issue was whether state requirements for expulsion hearings, not compelled by state criteria for expulsion and thus in a sense discretionary, were a reimbursable mandate. The holding did not reach that issue, as the court decided the costs were attributable to federal due process requirements. (*Id.* at pp. 888-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Nonetheless, the Supreme Court discussed at length the reach of City of Merced’s “voluntary” rationale, and rejected extending it whenever some element of discretion in incurring the cost existed, e.g., in deciding how many firefighters to hire into a fire department. (San Diego Unified School Dist., at pp. 886-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

“The Department and the Commission argue ... that any right to reimbursement for hearing costs triggered by discretionary expulsions-even costs limited to those procedures that assertedly exceed federal due process hearing requirements-is foreclosed by virtue of the circumstance that when a school pursues a discretionary expulsion, it is not acting under compulsion of any law but instead is exercising a choice. In support, the Department and the Commission rely upon Kern High School Dist., *supra*, 30 Cal.4th 727[, 134 Cal.Rptr.2d 237, 68 P.3d 1203], and City of Merced[, *supra*,] 153 Cal.App.3d 777[, 200 Cal.Rptr. 642].” (San Diego Unified School Dist., *supra*, 33 Cal.4th at p. 885, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The Supreme Court went on to state, in San Diego Unified School Dist.:

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“The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of ***1365***City of Merced, supra*, 153 Cal.App.3d 777[, 200 Cal.Rptr. 642], should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist., supra*, 30 Cal.4th 727[, 134 Cal.Rptr.2d 237, 68 P.3d 1203]. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.

****101** “Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under [article XIII B, section 6 of the state Constitution](#) and [Government Code section 17514](#), whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying [article XIII B, section 6 of the state Constitution](#) and [Government Code section 17514](#) and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley [Fire Protection Dist. v. State]*, [supra](#), 190 Cal.App.3d 521[, 234 Cal.Rptr. 795], an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id. at pp. 537-538*[, 234 Cal.Rptr. 795].) The court in *Carmel Valley [Fire Protection Dist. v. State]* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ-and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777[, 200 Cal.Rptr. 642], such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters

who enacted [article XIII B, section 6](#), or the Legislature that adopted [Government Code section 17514](#), intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.” (*San Diego Unified School Dist., supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589, fns. omitted.)

II. Costs of POBRA Are Incurred Voluntarily by School Districts and Special Districts That Are Permitted but Not Required to Employ Peace Officers

[1] The result of the cases discussed above is that, if a local government participates “voluntarily,” i.e., without legal compulsion or compulsion as a ***1366** practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement. The Commission concedes there is no legal compulsion for the school and special districts in issue to hire peace officers. As related, *Kern High School Dist.* suggests “involuntarily” can extend beyond “legal compulsion” to “compelled as a practical matter to participate.” (*Kern High School Dist., supra*, 30 Cal.4th at p. 748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) However, the latter term means facing “‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences” and not merely having to “adjust to the withdrawal of grant money along with the lifting of program obligations.” (*Id. at p. 754*, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) There is nothing in this record to show that the school and special districts in issue are practically compelled to hire peace officers.

The Commission points to two considerations to overcome the rule that participation in a voluntary program means additional costs are not mandates. The first is that the Legislature has declared that application of POBRA procedures to all ****102** public safety officers is a matter of statewide concern. The second consideration is that the Legislature has promulgated various rights to public safety ^{FN5} and rights and duties of peace officers, ^{FN6} which it is claimed, recognize “the need for local government entities to employ peace officers when necessary to carry out their basic functions.” Neither consideration persuasively supports the claim of practical compulsion.

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FN5. E.g., [article I, section 28](#), subdivision (c) (announcing a right to attend grade school campuses which are safe); [Education Code section 38000](#), subdivision (a) (authorizing school boards to hire peace officers to ensure safety of pupils and personnel); and [Education Code section 72330](#), subdivision (a) (authorizing a community college district to employ peace officers as necessary to enforce the law on or near campus).

FN6. E.g., [Penal Code sections 830.31-830.35](#), [830.37](#) (powers of arrest extend statewide), and 12025 (permitting peace officers to carry concealed weapons).

The consideration that the Legislature has determined that all public safety officers should be entitled to POBRA protections is immaterial. It is almost always the case that a rule prescribed by the Legislature that applies to a voluntary program will, nonetheless, be a matter of statewide concern and application. For example, the rule in [Kern High School Dist.](#) was that any district in the state that participated in the underlying funded educational programs was required to abide by the notice of meetings and agenda posting requirements. When the Legislature makes such a rule, it only says that if you participate you must follow the rule. This is not a rule that bears on compulsion to participate. (Cf. [Kern High School Dist., supra](#), 30 Cal.4th at p. 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [the proper focus of a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs, not that costs incurred in complying with program conditions have been legally compelled].)

***1367** Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission's argument would be forceful. However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is

embedded, is the only way as a practical matter to comply.

The Commission submits that this case should be distinguished from [City of Merced](#) and [Kern High School Dist.](#) because the districts “employ peace officers when necessary to carry out the essential obligations and functions established by law.” However, the “necessity” that is required is facing “ ‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences.” ([Kern High School Dist., supra](#), 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203, quoting [City of Sacramento v. State of California](#) (1990) 50 Cal.3d 51, 74, 266 Cal.Rptr. 139, 785 P.2d 522.) That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.

The Commission notes that [Carmel Valley Fire Protection Dist. v. State](#) characterizes police protection as one of “ ‘the most essential and basic functions of local government.’ ” ****103**([Carmel Valley Fire Protection Dist. v. State, supra](#), 190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795, quoting [Verreos v. City and County of San Francisco](#) (1976) 63 Cal.App.3d 86, 107, 133 Cal.Rptr. 649.) However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perforce must hire firefighters to supply that protection.

[2][3][4] Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. (See [San Diego Unified School Dist., supra](#), 33 Cal.4th at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589.) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. (*Id.* at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Accordingly, [San Diego Unified School Dist.](#) suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain ac-

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tions will occur in the administration of a mandatory program, costs *1368 attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of [City of Merced](#). (See [San Diego Unified School Dist.](#), *supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

[5] However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions. As there is no such showing in the record, the Commission erred in finding that POBRA constitutes a state-mandated program for school districts and the special districts identified in [Government Code section 3301](#). Similarly, the superior court erred in concluding as a matter of law that, “[a]s a practical matter,” the employment of peace officers by the local agencies is “not an optional program” and “they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement.”

DISPOSITION

The judgment is reversed. Each party shall bear its own costs on appeal. ([Cal. Rules of Court, rule 8.278\(a\)\(3\), \(5\).](#))

I concur: [BLEASE, J.](#), [SCOTLAND, P.J.](#), concurring. The Public Safety Officers Procedural Bill of Rights Act (POBRA) requires that peace officers employed by state and local governments must be provided with procedural rights and protections when they are subjected to investigation, interrogation, or discipline.

In this case, both the Commission on State Mandates and the trial court concluded that as to local school districts and special districts which are permitted by statute, but not required, to employ peace officers, the requirements of POBRA are a reimbursable mandate within the meaning of [article XIII B, section 6 of the California Constitution](#), which compels the State to bear the costs of new mandates imposed on local governments.

****104** The Commission on State Mandates reasoned that finding POBRA requirements are not reimbursable mandates would conflict with various laws that require local districts to provide safe school environments for students.

***1369** The trial court held the State must reimburse local school districts and special districts for the cost of POBRA requirements because, “[a]s a practical matter, the establishment of a police department and the employment of peace officers by school districts, community college districts and other local agencies is not an optional program”; “they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement, such as a large urban school district’s need for security and police officers to supplement city police or a municipal water district’s need for park rangers with the authority and powers conferred upon peace officers to issue citations and make arrests in district recreational facilities.”

My colleagues disagree with the Commission and the trial court. They conclude that because the local districts are not required to employ peace officers, and since there was no showing that exercising the authority to hire peace officers is the only reasonable means to carry out the districts’ core mandatory functions, POBRA is not a reimbursable mandate as to those districts.

My instinct tells me the trial court was right in concluding that, even if such local districts are not compelled by law to hire peace officers to perform the districts’ core functions, they must do so “as a practical matter.” However, instinct is insufficient to support a legal conclusion.

As the Department of Finance points out, the administrative record “is silent concerning the law enforcement needs and practices of [K-12] school districts and special districts,” and there is “no evidence showing that K-12 school districts cannot meet the safe schools requirement by relying on or contracting with city and county law enforcement.” Indeed, as the Department notes, the trial court “correctly observed that one could not know, ‘based on facts in this administrative record[,] that there is any law enforcement problem in any school in the State or the police have failed to provide adequate police ser-

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vices[.]’ ”

In sum, the Department persuasively argues: “Although state law authorizes these districts to hire peace officers, it does not require them to do so. Neither does state law penalize the districts in any way if they decide not to hire peace officers. Thus, state law does not legally or practically compel the districts to hire peace officers. And the districts are not entitled to reimbursement merely because their discretionary decision to hire officers triggers [POBRA]-related costs.”

***1370** Accordingly, I agree with my colleagues that the California Supreme Court precedent discussed in their opinion compels us to conclude that local districts' compliance with POBRA as to peace officers they employ is not a reimbursable State mandate because such districts are not required by law to employ peace officers and there is nothing in the record to support a finding that they are “practically” required to establish police departments and hire peace officers. Therefore, I concur in the opinion.

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END OF DOCUMENT

171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501, 09 Cal. Daily Op. Serv. 2982, 2009 Daily Journal D.A.R. 3466
 (Cite as: 171 Cal.App.4th 1183, 90 Cal.Rptr.3d 501)

C

Court of Appeal, Third District, California.
 CALIFORNIA SCHOOL BOARDS ASSOCIATION
 et al., Plaintiffs and Appellants,

v.

STATE of California et al., Defendants and Appel-
 lants.

Department of Finance, Intervener and Appellant.
 No. C055700.

March 9, 2009.

Background: Education interest groups and local government entities filed petition for writ of mandate and complaint for injunctive and declaratory relief, challenging amended statute limiting reimbursement to local governments for costs imposed as a result of ballot measures, and directing the Commission on State Mandates to set aside or reconsider specific test claims decisions that were issued before the amendment of the statute. The Superior Court, Sacramento County, No. 06CS01335, [Gail D. Ohanesian](#), J., granted the request for injunctive and declaratory relief and directed issuance of a writ of mandate. Parties appealed.

Holdings: The Court of Appeal, [Nicholson](#), Acting P.J., held that:

- (1) Legislature's directing the Commission on State Mandates to set aside or reconsider certain final test claims decisions violated separation of powers doctrine;
- (2) legislative declarations concerning whether a state mandate exists are irrelevant to the determination of the Commission on State Mandates as to whether a state mandate exists;
- (3) State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates;
- (4) statutory provision declaring that no reimbursement is necessary for costs resulting from "duties that are necessary to implement a ballot measure," does not violate state constitution;
- (5) statutory provision declaring that no reimbursement is necessary for "duties that are reasonably within the scope of a ballot measure" is impermissibly broad; and
- (6) statutes imposing duties on local governments do

not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[\[1\]](#) Constitutional Law 92 2383

[92](#) Constitutional Law

[92XX](#) Separation of Powers

[92XX\(B\)](#) Legislative Powers and Functions

[92XX\(B\)2](#) Encroachment on Judiciary

[92k2381](#) Imposition of Legislative

Preference in Particular Proceedings

[92k2383](#) k. Prescribing Rule of Decision or Directing Specific Result. [Most Cited Cases](#)

States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and

Statutory Liabilities. [Most Cited Cases](#)

Legislature's directing the Commission on State Mandates, a quasi-judicial body, to set aside or reconsider certain final test claims decisions violated separation of powers doctrine. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17500 et seq.](#)

[\[2\]](#) Constitutional Law 92 2330

[92](#) Constitutional Law

[92XX](#) Separation of Powers

[92XX\(A\)](#) In General

[92k2330](#) k. In General. [Most Cited Cases](#)

Constitutional Law 92 2332

[92](#) Constitutional Law

[92XX](#) Separation of Powers

[92XX\(A\)](#) In General

[92k2332](#) k. Encroachment in General. [Most Cited Cases](#)

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“Separation of powers doctrine” places limits upon the actions of each branch of state government with respect to the other branches; the state constitution vests each branch with certain core or essential functions that may not be usurped by another branch. [West's Ann.Cal. Const. Art. 3, § 3.](#)

[3] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#) Commission on State Mandates, as a quasi-judicial body established to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs, has the sole and exclusive authority to adjudicate whether a state mandate exists. [West's Ann.Cal. Const. Art. 13B, § 6;](#) [West's Ann.Cal.Gov.Code § 17500 et seq.](#)

[4] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#) Authority of Commission on State Mandates to issue a final decision that solely and exclusively adjudicates a test claim is limited only by judicial review. [West's Ann.Cal. Const. Art. 13B, § 6;](#) [West's Ann.Cal.Gov.Code § 17500 et seq.](#)

[5] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#) Once a decision of the Commission on State Mandates becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus, it is not subject to collateral attack. [West's Ann.Cal. Const. Art. 13B, § 6;](#) [West's Ann.Cal.Gov.Code § 17500 et seq.;](#) [West's Ann.Cal.C.C.P. § 1094.5.](#)

[6] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and

Statutory Liabilities. [Most Cited Cases](#)

Once decisions of the Commission on State Mandates are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions.

[7] Administrative Law and Procedure 15A 501

[15A](#) Administrative Law and Procedure

[15AIV](#) Powers and Proceedings of Administrative Agencies, Officers and Agents

[15AIV\(D\)](#) Hearings and Adjudications

[15Ak501](#) k. Res Judicata. [Most Cited Cases](#)

An administrative agency's quasi-judicial decision is binding in later civil actions.

[8] Administrative Law and Procedure 15A 501

[15A](#) Administrative Law and Procedure

[15AIV](#) Powers and Proceedings of Administrative Agencies, Officers and Agents

[15AIV\(D\)](#) Hearings and Adjudications

[15Ak501](#) k. Res Judicata. [Most Cited Cases](#)

Unless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.

[9] Administrative Law and Procedure 15A 501

[15A](#) Administrative Law and Procedure

[15AIV](#) Powers and Proceedings of Administrative Agencies, Officers and Agents

[15AIV\(D\)](#) Hearings and Adjudications

[15Ak501](#) k. Res Judicata. [Most Cited Cases](#)

A party to a final adjudication of an administrative agency is collaterally estopped from relitigating the issues if (1) the agency acted in a judicial capacity, (2) it resolved the disputed issues, and (3) all parties had the opportunity to fully and fairly litigate the issues.

[10] States 360 111

[360](#) States

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[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
 Legislative declarations concerning whether a state mandate exists are irrelevant to the determination of the Commission on State Mandates as to whether a state mandate exists. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17500 et seq.](#)

[11] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
 State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates. [West's Ann.Cal. Const. Art. 13B, § 6](#).
See Cal. Jur. 3d, State of California, §§ 102, 104; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 119, 121.

[12] Constitutional Law 92 2340

[92](#) Constitutional Law

[92XX](#) Separation of Powers

[92XX\(B\)](#) Legislative Powers and Functions

[92XX\(B\)1](#) In General

[92k2340](#) k. Nature and Scope in General. [Most Cited Cases](#)
 The entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the state constitution.

[13] Constitutional Law 92 1002

[92](#) Constitutional Law

[92VI](#) Enforcement of Constitutional Provisions

[92VI\(C\)](#) Determination of Constitutional Questions

[92VI\(C\)3](#) Presumptions and Construction as to Constitutionality

[92k1001](#) Doubt

[92k1002](#) k. In General. [Most Cited Cases](#)

Constitutional Law 92 2340

[92](#) Constitutional Law

[92XX](#) Separation of Powers

[92XX\(B\)](#) Legislative Powers and Functions

[92XX\(B\)1](#) In General

[92k2340](#) k. Nature and Scope in General. [Most Cited Cases](#)

If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action; such restrictions and limitations imposed by the state constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.

[14] States 360 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)

The term "Legislature" in state constitutional provision requiring the state to reimburse local government "[w]henver the Legislature or any state agency mandates a new program or higher level of service," does not include the people acting pursuant to the power of initiative. [West's Ann.Cal. Const. Art. 13B, § 6](#).

[15] Constitutional Law 92 592

[92](#) Constitutional Law

[92V](#) Construction and Operation of Constitutional Provisions

[92V\(A\)](#) General Rules of Construction

[92k590](#) Meaning of Language in General

[92k592](#) k. Plain, Ordinary, or Common Meaning. [Most Cited Cases](#)

When interpreting the state constitution, courts must choose the plain meaning of the provision if the language is clear and unambiguous.

[16] Constitutional Law 92 603

[92](#) Constitutional Law

[92V](#) Construction and Operation of Constitutional Provisions

[92V\(A\)](#) General Rules of Construction

[92k603](#) k. Extrinsic Aids to Construction in General. [Most Cited Cases](#)

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Constitutional Law 92 🔑604

92 Constitutional Law

[92V](#) Construction and Operation of Constitutional Provisions

[92V\(A\)](#) General Rules of Construction

[92k604](#) k. History in General. [Most Cited Cases](#)

If state constitutional language is ambiguous, courts turn to extrinsic evidence, such as ballot arguments, for its interpretation.

[17] States 360 🔑111

360 States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
Statutory provision declaring that no reimbursement of local government is necessary for costs resulting from “duties that are necessary to implement a ballot measure,” does not violate state constitutional provision requiring the state to reimburse local government whenever the Legislature or any state agency mandates a new program or higher level of service. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17556\(f\)](#).

[18] Constitutional Law 92 🔑2488

92 Constitutional Law

[92XX](#) Separation of Powers

[92XX\(C\)](#) Judicial Powers and Functions

[92XX\(C\)2](#) Encroachment on Legislature

[92k2485](#) Inquiry Into Legislative Judgment

[92k2488](#) k. Policy. [Most Cited Cases](#)

Constitutional Law 92 🔑2489

92 Constitutional Law

[92XX](#) Separation of Powers

[92XX\(C\)](#) Judicial Powers and Functions

[92XX\(C\)2](#) Encroachment on Legislature

[92k2485](#) Inquiry Into Legislative Judgment

[92k2489](#) k. Wisdom. [Most Cited Cases](#)

Cases

The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wis-

dom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function.

[19] States 360 🔑111

360 States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
Statutory provision declaring that no reimbursement of local governments is necessary for “duties that are reasonably within the scope of a ballot measure” is impermissibly broad, as it allows for denial of reimbursement when reimbursement is constitutionally required. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code § 17556\(f\)](#).

[20] States 360 🔑111

360 States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State Expenses and Charges and Statutory Liabilities. [Most Cited Cases](#)
Statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs. [West's Ann.Cal. Const. Art. 13B, § 6](#).

West Codenotes

Held Unconstitutional [West's Ann.Cal.Gov.Code § 17556](#) **504 Olson, Hagel & Fishburn, [Deborah B. Caplan](#), and [N. Eugene Hill](#), Sacramento, for Plaintiffs and Appellants.

Edmund G. Brown, Jr., Attorney General, [Christopher E. Krueger](#), Senior Assistant Attorney General, Jonathan K. Renner, [Steven M. Gevercer](#), and [Ross C. Moody](#), Deputy Attorneys General, for Defendants and Appellants.

[Camille Shelton](#), Sacramento, and Katherine A. Tokarski, for Intervener and Appellant.

[NICHOLSON](#), Acting P.J.

*1189 The Legislature recently amended the law with respect to reimbursement to local governments for

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costs imposed as a result of ballot measures. The amended statute provides that the state need not provide reimbursement if “[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included, in a ballot measure approved by voters in a statewide or local election....” ([gov.code, § 17556](#), SUBD. (F).) THE Legislature also directEd tHe commission on State Mandates to set aside or reconsider specific test claims decisions that were issued before the amendment of the statute.

In this case, we must determine whether the Legislature's direction to the Commission to redecide cases that were already final violated the separation of powers doctrine. We conclude that such direction exceeds the Legislature's power.

****505** We also must determine whether the amended statute is consistent with [article XIII B, section 6 of the California Constitution](#), which requires the state to reimburse local governments for certain costs imposed on the local governments by the Legislature and state agencies. We conclude that, to the extent that the amended statute provides that the state need not reimburse local governments for imposing duties that are expressly included in or necessary to implement a ballot measure, the statute is consistent with [article XIII B, section 6](#). However, any duty not expressly included in or necessary ***1190** to implement the ballot measure gives rise to a reimbursable state mandate, even if the duty is reasonably within the scope of the ballot measure.

THE PARTIES

The appellants and cross-respondents include the State of California, Department of Finance, Office of State Controller, and Commission on State Mandates. Except for the Commission on State Mandates, these parties filed a joint brief. We refer to them as the State. The Commission on State Mandates filed its own brief, and we refer to it simply as the Commission.

The respondents and cross-appellants include two associations (California School Boards Association (CSBA) and Education Legal Alliance (ELA)) and four local government entities (County of Fresno, City of Newport Beach, Sweetwater Union High School District, and County of Los Angeles). Be-

cause the respondents and cross-appellants are represented by the same counsel and make the same arguments, we will refer to the respondents and cross-appellants collectively using the acronym for the first named party, CSBA.

BACKGROUND

A. Law and Procedure Relating to Mandates

In 1978, the voters of California passed Proposition 13 to limit the power of state and local governments to increase taxes. The next year, the voters passed Proposition 4, called the “Spirit of 13” to limit growth in governmental spending. ([San Francisco Taxpayers Assn. v. Board of Supervisors](#) (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) Proposition 4 imposed government spending limits and required the state to reimburse local governments for the costs of complying with state-imposed programs.^{FN1} ([Cal. Const., art. XIII B, § 6](#) (hereafter, [art. XIII B, § 6](#)); [County of Sonoma v. Commission on State Mandates](#) (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784.)

^{FN1}. We use the term “local governments” to refer, generally, to cities, counties, school districts, and other governmental entities that may be entitled to reimbursement for state-mandated costs.

Subdivision (a) of [article XIII B, section 6](#) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service....” [Section 6](#) grants three exceptions to this ***1191** general rule: (1) mandates requested by the local government, (2) legislation concerning crimes, and (3) mandates implemented prior to January 1, 1975. ([Art. XIII B, § 6](#), subd. (a).)

The Legislature responded to Proposition 4 by creating the Commission on State Mandates (Commission) to determine whether reimbursement was required for new state mandates. Local governments ****506** may file test claims, which the Commission adjudicates. (Stats.1984, ch. 1459, § 1; [Gov.Code, § 17500 et seq.](#); [County of Fresno v. State](#) (1991) 53 Cal.3d 482, 484, 280 Cal.Rptr. 92, 808 P.2d 235.)

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Decisions of the Commission are subject to judicial review under [Code of Civil Procedure section 1094.5](#). ([Gov.Code, § 17559](#), subd. (b).)

In the same legislation that created the Commission, the Legislature directed the Commission not to find local government costs reimbursable if, among other things, “[t]he statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election” (ballot measure mandates). (Stats.1984, ch. 1459, § 1, pp. 5118, 5119; former [Gov.Code, § 17556](#), subds. (a)(3) & (a)(6).)

Applying [article XIII B, section 6](#), and [Government Code section 17556](#), the Commission resolved several test claims relevant to this action (and described below) involving ballot measure mandates. In those decisions, the Commission found costs reimbursable to the local governments because the legislation imposed costs exceeding the ballot measure mandates (not expressly included in a ballot measure).

In 2005, the Legislature made changes to [Government Code section 17556](#) and directed the Commission to “set aside” some of its test claim decisions and to “reconsider” other test claim decisions. (Stats.2005, ch. 72 (Assem. Bill No. 138).)

Assembly Bill No. 138 changed the wording of [Government Code section 17556](#), subdivision (f) with respect to ballot measure mandates. The 2005 provision stated that costs are not reimbursable if “[t]he statute or executive order imposes duties that *are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was *1192 approved by the voters.*” ^{FN2} (Stats.2005, ch. **507 72, § 7; [Gov.Code, § 17556](#), subdivision (f), italics added for new statutory language.)

[FN2. Government Code section 17556](#) states:

“The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a

hearing, the commission finds any one of the following:

“(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision.

“(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

“(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

“(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

“(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount

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sufficient to fund the cost of the state mandate.

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

“(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

Complying with the Legislature's requirement that it set aside or reconsider certain test claims, the Commission held new hearings on the test claims. It found that, pursuant to new laws and the amendment to [Government Code section 17556](#), the costs that it had previously concluded were reimbursable costs were no longer reimbursable. Below we summarize each of those test claim decisions.

CSBA filed a petition for writ of mandate and complaint for injunctive and declaratory relief in the trial court. It asserted that the language of subdivision (f) of [Government Code section 17556](#) conflicts with the requirements of [article XIII B, section 6](#). CSBA also asserted that the legislation forcing the Commission to set aside or reconsider its prior decisions violated the separation of powers doctrine in the California Constitution.

***1193** After a hearing, the trial court considered CSBA's arguments that subdivision (f) of [Government Code section 17556](#) conflicts with [article XIII B, section 6](#) because (1) ballot measure mandates fall within the category of mandates from “the Legislature or any state agency” ([art. XIII B, § 6](#)), and, (2), even if ballot measure mandates are not reimbursable pursuant to [article XIII B, section 6](#), the statute's provision that mandates “necessary to implement [or] reasonably within the scope of ... a ballot measure” is overly broad and therefore conflicts

with [article XIII B, section 6](#). The court concluded that the plain language of [article XIII B, section 6](#) (mandates of “the Legislature or any state agency”) does not include ballot measure mandates, meaning that the state is not required to reimburse local governments for mandates “expressly included” in ballot measures. However, the court determined that the new language of the statute relieving the state of reimbursement for mandates that are “necessary to implement [or] reasonably within the scope of ... a ballot measure” violates [article XIII B, section 6](#).

The trial court then considered CSBA's arguments that the legislation forcing the Commission to set aside or reconsider its ballot measure mandate decisions constituted a violation of the separation of powers doctrine. The court held that the legislation requiring the Commission to “set aside” its decisions was a violation of the separation of powers doctrine because it was an attempt to dictate to the Commission a finding that there is no reimbursable mandate and it directed the Commission to set aside a determination that was already final. On the other hand, the court held that the Legislature's direction to the Commission to “reconsider” other decisions was merely a procedural requirement with no retroactive application and therefore did not violate the separation of powers doctrine.

Based on these conclusions, the trial court granted the request for injunctive and declaratory relief and directed issuance of a writ of mandate. The court ordered the Commission to set aside the ****508** decisions that relied on [Government Code section 17556](#), subdivision (f), as amended by Assembly Bill No. 138, in finding that costs were not reimbursable and to take no action in reliance on the amendment to that subdivision.

B. Test Claims

1. *Open Meetings Act* (CSM 4257) and *Brown Act Reform* (CSM 4469) Test Claims ^{FN3}

^{FN3}. The numbers in parentheses after the names of the test claims are those assigned to the test claims by the Commission.

In 1988 and 2001, the Commission decided the *Open Meetings Act* and *Brown Act Reform* test claims, respectively. In each decision, the Commission ***1194**

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found that the state must reimburse costs to the local governments for costs mandated by the legislation.

In the *Open Meetings Act* decision, the Commission considered Government Code provisions that required the legislative body of a local agency to post an agenda for its meetings before the meeting and prohibited action at the meeting on any item not previously posted. The provisions also required the legislative body to provide to members of the public the opportunity to address the legislative body on items of interest. The Commission concluded that these provisions mandated a higher level of service and increased costs. Therefore, the costs were reimbursable by the state.

In the *Brown Act Reform* decision, the Commission considered additional Government Code provisions concerning open meetings. Those provisions required the legislative body of a local agency to include in the posted agenda and to disclose in an open meeting a description of any items to be discussed in a closed session. The provisions also required the legislative body to reconvene in an open meeting to report the actions taken in the closed session and provide copies of documents from the closed session. The Commission concluded that the provisions mandated a higher level of service and increased costs, thereby necessitating reimbursement from the state.

In 2004, the voters passed Proposition 59. This constitutional amendment provided: “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” ([Cal. Const., art. I, § 3\(b\)\(1\).](#))

Assembly Bill No. 138 repealed the Government Code provisions that the Commission had found resulted in reimbursable costs mandated by the state. (Stats.2005, ch. 72, §§ 11, 13.) It then reenacted the provisions verbatim, except that it added a subdivision to each provision stating, “This section is necessary to implement and reasonably within the scope of [Proposition 59].” (Stats.2005, ch. 72, §§ 12, 14; [Gov. Code, §§ 54954.2](#), subd. (c), [54957.1](#), subd. (f).) Assembly Bill No. 138 directed the Commission to “set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469)

test claims,” retroactive to the effective date of Assembly Bill No. 138. (Stats.2005, ch. 72, § 17(b).)

Complying with Assembly Bill No. 138's direction to set aside its decisions in the *Open Meetings Act* and *Brown Act Reform* test claims, the Commission set aside those decisions in September 2005, retroactive to the effective date of Assembly Bill No. 138. In doing so, the *1195 Commission recognized Assembly Bill No. 138's finding that the **509 Government Code provisions in question are necessary to implement and reasonably within the scope of Proposition 59. Beyond that recognition, however, the Commission independently came to the same conclusion, that the Government Code provisions are necessary to implement and reasonably within the scope of Proposition 59. Therefore, the *Open Meetings Act* and *Brown Act Reform* test claim decisions no longer result in costs reimbursable by the state.

The trial court determined that the provision in Assembly Bill No. 138 directing the Commission to set aside its decisions, reconsiderations, parameters, and guidelines in the *Open Meetings Act* and *Brown Act Reform* test claims violated the separation of powers doctrine. The court also determined that the language in Assembly Bill No. 138 stating that the Government Code provisions in question were necessary to implement and reasonably within the scope of Proposition 59 constituted an unlawful attempt, in violation of the separation of powers doctrine, to dictate to the Commission that it find no reimbursable costs as to those test claims. Based on these determinations, the court ordered issuance of a writ commanding the Commission to set aside its September 2005 decision with respect to the *Open Meetings Act* and *Brown Act Reform Act* test claims and to take no further action on those test claims inconsistent with the court's judgment.

2. Mandate Reimbursement Process Test Claims (CSM 4204/4485 and 05-TC-05)

In 1986, the Commission rendered a decision concluding that the process imposed on local governments for preparing and submitting a claim for reimbursable costs for state mandates was itself a state mandate for which costs were reimbursable to the local government. This test claim is referred to as *Mandate Reimbursement Process I*.

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Assembly Bill No. 138 directed the Commission to reconsider its *Mandate Reimbursement Process I* test claim decision. It also directed that any changes in that decision were to be retroactive to July 1, 2006.^{FN4} (Stats.2005, ch. 72, § 17(a).)

FN4. Assembly Bill No. 138 referred to this test claim using the wrong claim number. It directed the Commission to reconsider claim number CSM 4202, instead of the actual number, which is CSM 4204. The Commission concluded that this was merely an inconsequential error, as the clear legislative intent was for the Commission to reconsider CSM 4204. The parties do not mention this mistake in their briefs.

Complying with Assembly Bill No. 138, the Commission reconsidered the *Mandate Reimbursement Process I* test claim. ***1196** It concluded that the statutes concerning the mandate reimbursement process do not impose reimbursable costs because the statutes are necessary to implement and reasonably within the scope of Proposition 4.

In 2005, after the passage of Assembly Bill No. 138, a second test claim was filed with the Commission, asserting that legislative changes made since 1986 to the process of claiming reimbursable costs imposed further reimbursable costs on the local government. This test claim is referred to as *Mandate Reimbursement Process II*.

The Commission issued a decision in *Mandate Reimbursement Process II*. It concluded that, even though the statutes concerning the mandate reimbursement process imposed costs on the local government, the costs are not reimbursable because they are necessary to implement and reasonably within the scope of Proposition 4. However, the Commission did not ****510** make its own determination that the statutes are necessary to implement and reasonably within the scope of Proposition 4. Instead, the Commission simply cited the Legislature's declaration in [Government Code section 17500](#) that the Legislature's intent in enacting the statutes was "to provide for the implementation of [Proposition 4]."

The trial court determined that the provision in Assembly Bill No. 138 directing the Commission to reconsider the *Mandate Reimbursement Process I* test

claim decision did not violate the separation of powers doctrine because it was merely procedural, did not dictate a result, and had prospective effect only. As to both the *Mandate Reimbursement Process I* and *Mandate Reimbursement Process II* test claims, however, the court determined that the Commission's decisions must be set aside because the Commission applied [Government Code section 17556](#), subdivision (f), which states that mandates that are necessary to implement or reasonably within the scope of a ballot measure are not reimbursable.

3. *School Accountability Report Cards* Test Claim (97-TC-21)

In 1988, the voters passed Proposition 98, which included a provision requiring school districts to issue school accountability report cards for each school in the district based on a model to be prepared by the State Superintendent of Public Instruction and adopted by the State Board of Education. The ballot measure required the model to include assessment of 13 school elements, although it did not limit the model to those elements.^{FN5} (Former [Educ.Code, §§ 33126, 35256](#), as added by Prop. 98.)

FN5. Proposition 98 added former [Education Code section 33126](#), subdivision (a), which stated:

"The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

"(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.

"(2) Progress toward reducing drop-out rates.

"(3) Estimated expenditures per student, and types of services funded.

"(4) Progress toward reducing class sizes and teaching loads.

"(5) Any assignment of teachers outside their subject areas of competence.

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“(6) Quality and currency of textbooks and other instructional materials.

“(7) The availability of qualified personnel to provide counseling and other student support services.

“(8) Availability of qualified substitute teachers.

“(9) Safety, cleanliness and adequacy of school facilities.

“(10) Adequacy of teacher evaluations and opportunities for professional improvement.

“(11) Classroom discipline and climate for learning.

“(12) Teacher and staff training, and curriculum improvement programs.

“(13) Quality of school instruction and leadership.”

Over the years, the Legislature has added numerous additional elements to the school accountability report card, such as information on salaries paid to *1197 teachers and administrators, the degree to which pupils are prepared to enter the work force, the number of instructional minutes offered in the school year, SAT scores, dropout rates, class sizes, teacher credentialing, and suspension and expulsion rates. ([Educ.Code, § 33126.](#))

In 1998, the Commission rendered a decision stating that the 13 elements required by Proposition 98 to be included in the school accountability report cards are not reimbursable because they were expressly included in the ballot measure. As to the additional elements added by the Legislature, however, the Commission concluded**511 that the legislation “impose[d] a new program or higher level of service upon local school districts and therefore are reimbursable under [section 6, article XIII B of the California Constitution](#)...”

In 2004 and again in 2005, the Legislature directed

the Commission to reconsider its decision in the *School Accountability Report Cards* test claim in light of new federal and state laws and state court decisions. ^{FN6} The legislation directed that the decision of the Commission be made retroactive to January 1, 2005. (Stats.2004, ch. 895, § 18; Stats.2005, ch. 677, § 53.) Upon reconsideration, the Commission concluded that, although the additional elements added to the school accountability report card were not expressly included in Proposition 98, they were reasonably within the scope of the ballot measure and, therefore, were not reimbursable. The Commission also stated two alternative grounds for denying the claim: (1) the additional school accountability report card elements added by the Legislature required only a minimal reallocation of resources and (2) the State essentially funds the school accountability report cards through Proposition 98's mandatory funding.

^{FN6} The 2005 legislation directing reconsideration was necessary because the 2004 legislation had failed to include each of the Education Code amendments that the Legislature wanted the Commission to reconsider. (See Stats.2005, ch. 677, § 53.)

*1198 The trial court held that, while the Legislature could validly direct reconsideration of the *School Accountability Report Cards* test claim, the new decision was improper because of its reliance on the amended language of [Government Code section 17556](#), subdivision (f), excepting from the mandate requirement any duties that are necessary to implement or reasonably within the scope of ballot measures. The court directed the Commission to set aside its new decision and take no further action inconsistent with the court's ruling.

DISCUSSION

I

Separation of Powers

[1] We first consider the separation of powers arguments because, as will be seen, application of that constitutional limitation on the Legislature's power resolves the definitive issues concerning all but one of the test claim decisions. We conclude that the Legislature's direction to set aside or reconsider the deci-

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sions in the *Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim exceeded the Legislature's power and, therefore, the Commission's new decisions must be set aside. This does not affect the *Mandate Reimbursement Process II* test claim decision because it was not made pursuant to a legislative directive to set aside or reconsider a prior decision.

[2] “ ‘From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine.’ [Citation.] That Constitution apportions the powers of state government among the three branches familiar to all students of government in this country—legislative, executive, and judicial—and states that ‘[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.’ ([Cal. Const., art. III, § 3.](#)) Despite the apparent sharp division of powers among the governmental branches that the California Constitution provides, in reality the branches are mutually dependent in many respects, and the actions of one branch may significantly ****512** affect another branch. [Citation.] ... [¶] ‘At the same time, this doctrine unquestionably places limits upon the actions of each branch with respect to the other branches.’ [Citation.] The Constitution ‘vest[s] each branch with certain “core” [citation] or “essential” [citation] functions that may not be usurped by another branch.’ [Citation.]” ([Le Francois v. Goel \(2005\) 35 Cal.4th 1094, 1102, 29 Cal.Rptr.3d 249, 112 P.3d 636.](#))

***1199** The State asserts that the trial court erred in finding that the Legislature violated the separation of powers doctrine when it directed the Commission to *set aside* its decisions in the *Open Meetings Act* and *Brown Act Reform* test claims. CSBA disagrees and additionally asserts that the Legislature violated the separation of powers doctrine when it directed the Commission to *reconsider* its decisions in the *School Accountability Report Cards* and *Mandate Reimbursement I* test claims. We conclude that the Legislature's direction to the Commission to set aside or reconsider final test claim decisions exceeded the Legislature's power.

In Assembly Bill No. 138 and corresponding legislation, the Legislature directed the Commission to set aside, in one instance, and reconsider, in the others,

its decisions on the test claims at issue here. The trial court decided that the direction to reconsider test claims “is procedural only; it operates, or can be construed to operate prospectively only; it does not dictate the result; and, therefore, it does not violate the separation of powers doctrine.” As for the Legislature's direction to the Commission to set aside a test claim decision, however, the trial court concluded that it violated the separation of powers doctrine because it did not merely require the Commission to reconsider them. This is the extent of the distinction identified by the trial court.

[3] On appeal, the State urges us to find that the direction to set aside test claims did not violate the separation of powers doctrine because doing so was functionally the same as directing the Commission to reconsider the test claim decisions. On the other hand, CSBA, in its cross-appeal, argues that the Legislature violated the separation of powers as to the direction to reconsider test claim decisions as well as the direction to set aside a test claim decision. We conclude that CSBA is correct. The Legislature exceeded its power and therefore violated the separation of powers doctrine when it directed the Commission to set aside and reconsider test claim decisions. As a quasi-judicial decision maker, the Commission does its work independent of legislative oversight and is not subject to review by the Legislature. The Legislature had no power to direct the Commission to set aside or reconsider specific test claim decisions.

“In [\[Government Code\] section 17500 et seq.](#), the Legislature established the Commission as a quasi-judicial body to carry out a comprehensive administrative procedure for resolving claims for reimbursement of state-mandated local costs arising out of [article XIII B, section 6](#) ... of the California Constitution.

***1200** “ ‘The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. [Citation.]

“ ‘ ‘It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a

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claimed violation of [\[article XIII B,\] section 6](#) lies ****513** in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes [*sic*] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created... [¶] ... In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [\[article XIII B,\] section 6.](#)" [Citation.]

" "Thus, the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists." [Citation.]" ([Redevelopment Agency v. Commission on State Mandates \(1996\) 43 Cal.App.4th 1188, 1192-1193, 51 Cal.Rptr.2d 100](#), italics omitted.)

[\[4\]](#) The Commission's authority to issue a final decision that solely and exclusively adjudicates a test claim is limited only by judicial review. "A claimant or the state may commence a proceeding in accordance with the provisions of [Section 1094.5 of the Code of Civil Procedure](#) to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence...." ([Gov.Code, § 17559](#), subd. (b).)

[\[5\]](#) The Legislature's direction to the Commission to reconsider or set aside its final decisions is an unlawful collateral attack on those decisions. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus ([Code Civ. Proc., 1094.5](#)), it is not subject to collateral attack. As a collateral attack, the Legislature's direction to the Commission to set aside or reconsider Commission decisions went beyond the power of the Legislature.

The Legislature is powerless to overturn a specific judicial decision. ([Mandel v. Myers \(1981\) 29 Cal.3d 531, 547, 174 Cal.Rptr. 841, 629 P.2d 935 \(Mandel\)](#).) "Our Constitution assigns the resolution of such specific controversies to the judicial branch of government ([Cal. Const., art. VI, § 1](#)) and provides the Legislature with no authority to set itself above the judiciary by discarding the outcome or readjudicating the merits of particular judicial ***1201** proceedings." ([Mandel, supra, at p. 547, 174 Cal.Rptr. 841, 629](#)

[P.2d 935.](#)) "[T]he fundamental separation of powers doctrine embodied in [article III, section 3 of the California Constitution](#) [citation] forbids any such legislative usurpation of traditional judicial authority." ([Mandel, supra, at p. 547, 174 Cal.Rptr. 841, 629 P.2d 935.](#))

[\[6\]\[7\]\[8\]](#) Once the Commission's decisions are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions. An administrative agency's quasi-judicial decision is binding in later civil actions. ([Johnson v. City of Loma Linda \(2000\) 24 Cal.4th 61, 65, 99 Cal.Rptr.2d 316, 5 P.3d 874.](#)) "[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." ([Id. at pp. 69-70, 99 Cal.Rptr.2d 316, 5 P.3d 874.](#)) Therefore, like a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure. ([Gov.Code, § 17559](#), subd. (b).)

There is no legally defensible basis for distinguishing between the Legislature's ****514** direction to set aside, on one hand, and to reconsider, on the other, a final determination by the Commission. The trial court found that the direction to reconsider was merely procedural and therefore did not overstep the Legislature's bounds. However, the effect of the direction to reconsider was to nullify the finality of specific Commission decisions. Such a case-by-case legislative abrogation of Commission decisions violates the separation of powers doctrine.

The conclusion that the Commission's decisions are beyond the reach of legislative encroachment is supported in [Carmel Valley Fire Protection Dist. v. State of California \(1987\) 190 Cal.App.3d 521, 234 Cal.Rptr. 795 \(Carmel Valley\)](#). In that case, the State required counties to supply firefighters with protective clothing and equipment. The counties filed a petition for reimbursement with the Board of Control, the Commission's predecessor. The Board of Control found that the clothing and equipment requirement constituted a state mandate and ordered reimbursement. The State did not challenge the decision of the Board of Control by seeking a writ of mandate during

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the statutory time limit. The Legislature then refused to appropriate funds for reimbursement. (*Id.* at pp. 530-533, 234 Cal.Rptr. 795.)

When the counties sought judicial relief for the failure to provide reimbursement, the State attempted to argue that the decision of the Board of Control was incorrect. The court held, however, that the State could not obtain relief in this manner, even if the decision of the Board of Control was *1202 incorrect, because the State waived the right to challenge the decision and was collaterally estopped from doing so. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 534-537, 234 Cal.Rptr. 795.)

[9] As in *Carmel Valley*, the State, in this case, is not entitled to nullify the finality of the prior Commission decisions, whether by refusing to fund a mandate or directing the Commission to reconsider. The State is bound by those decisions. As noted in *Carmel Valley*, a party to a final adjudication of an administrative agency is collaterally estopped from relitigating the issues if (1) the agency acted in a judicial capacity, (2) it resolved the disputed issues, and (3) all parties had the opportunity to fully and fairly litigate the issues. (*Carmel Valley, supra*, 190 Cal.App.3d at p. 535, 234 Cal.Rptr. 795.) Each of the elements is present in this case. Therefore, the State may not attack the test claim decisions by having the Legislature require the Commission to set aside or reconsider its decisions.

Because the Legislature had no power to direct the Commission to set aside or reconsider its test case decisions, the Commission's actions in response to that direction were unauthorized. The Commission, itself, stated in its new decisions that it was acting to reconsider or set aside the decisions pursuant to the direction of the Legislature.

Therefore, the setting aside and reconsideration of the test claims at issue here (*Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim) was unauthorized, and we direct the trial court to modify its judgment and the writ of mandate accordingly. The lone exception is the *Mandate Reimbursement Process II* test claim decision, which was heard pursuant to a new test claim and was not a reconsideration of a prior test claim.

Over time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission's decision. While decisions of the **515 Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. CSBA argues that the most analogous procedure is the inherent power of a court to modify a continuing injunction to take into account changes in the law and material circumstances. We conclude that we need not decide this question.

In deciding that the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside or reconsidered, we do not imply that there is no way to obtain reconsideration of a Commission *1203 decision when the law or material circumstances have changed. We only conclude that the Legislature's attempt to force a reconsideration in this case violated the separation of powers doctrine. Whether the Commission, exercising inherent powers, may agree to reconsider a decision or the Legislature may provide, generally, a process for obtaining reconsideration of a decision is beyond the scope of this opinion.^{FN7}

FN7. The Commission is authorized by statute to reconsider a decision within 30 days, with a possible 30-day extension, after issuing the decision. (*Gov.Code, § 17559*, subd. (a).) The statutory time to obtain reconsideration is well past.

II

Additional Separation of Powers Argument

Because we have already determined that the setting aside and reconsideration of all but one of the test claim decisions at issue in this appeal was unauthorized, we need not consider further arguments concerning those test claim decisions. Accordingly, the remaining discussion relates to the *Mandate Reimbursement Process II* test claim.

In finding that the duties imposed by the State did not give rise to reimbursable costs in the *Mandate Reimbursement Process II* test claim decision, the Com-

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mission did not decide for itself whether those duties were expressly included in or necessary to implement a ballot measure. Instead, the Commission simply cited the Legislature's declaration in [Government Code section 17500](#) that the Legislature's intent in enacting the statutes was "to provide for the implementation of [Proposition 4]." "Thus," concluded the Commission, "the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of [section 17556](#), subdivision (f), in that they are 'necessary to implement [or] reasonably within the scope of' [article XIII B, section 6](#)." (Brackets in original.)

[10] The Commission's conclusion that the Legislature's statement of intent resolved the matter was unjustified because legislative declarations concerning whether a state mandate exists are irrelevant to the Commission's determination of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304 (*County of Los Angeles*).)

In *County of Los Angeles*, the court considered a Penal Code statute imposing duties on local governments and providing for state mandate reimbursement to local governments for implementing the duties. (32 Cal.App.4th at pp. 811-812, 38 Cal.Rptr.2d 304.) When the State discontinued payments, the county filed a test claim, asserting that the Legislature's *1204 provision granting state mandate reimbursement was a "final and unchallengeable determination that [the statute] constitute[d] a state mandate." (*Id.* at p. 818, 38 Cal.Rptr.2d 304.) The *County of Los Angeles* court disagreed. It held that "the Commission,**516 as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed." (*Id.* at p. 819, 38 Cal.Rptr.2d 304.)

Applying the holding in *County of Los Angeles*, we conclude that the Legislature's declarations concerning its intent in enacting the state mandate reimbursement provisions are simply irrelevant to the determination of whether a state mandate exists. We discern no conflict between this conclusion and [article III, section 3.5 of the Constitution](#), stating that an administrative agency has no power to declare a

statute unconstitutional or refuse to enforce it on that basis. A legislative finding that a mandate exists is irrelevant to the Commission's determination and, therefore, it is unnecessary to determine whether the finding conflicts with the Constitution. (*County of Los Angeles, supra*, 32 Cal.App.4th at pp. 819, 38 Cal.Rptr.2d 304.) On remand, the Commission must disregard any declarations of legislative intent and, instead, decide for itself whether a reimbursable state mandate exists.

III

Alternative Basis for Rejecting Claim

In reconsidering the *School Accountability Report Cards* test claim, after it was directed to do so by the Legislature, the Commission determined that the application of the amended version of [Government Code section 17556](#), subdivision (f) resulted in a finding that there were no reimbursable costs. The Commission then continued: "Even in the absence of [Government Code section 17556](#), subdivision (f), there is a separate and independent ground for finding that the test claim legislation does not impose costs mandated by the state." The Commission then found that (1) the additional school accountability report card elements added by the Legislature required only a minimal reallocation of resources and (2) the State essentially funds the school accountability report cards through Proposition 98's mandatory funding.

In its separate appeal, the Commission asserts that, even if we determine that the statutes that required reconsideration are unconstitutional, we should reverse the trial court's judgment as to the *School Accountability Report Cards* test claim because the trial court did not consider the alternative grounds that the Commission gave for its finding that there were no reimbursable costs. CSBA argues that we should disregard this assertion because it was not raised in the trial court. CSBA also argues that the alternative *1205 grounds cited by the Commission are not a valid basis for upholding the Commission's decision because the Commission acted only pursuant to the Legislature's invalid direction to reconsider the test claim decision. We conclude that the alternative grounds cited by the Commission have no bearing on the outcome because the Legislature's direction to the Commission to reconsider the *School Accountability*

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Report Cards test claim decision exceeded the Legislature's power.

The Commission agrees that the issue of whether the alternative grounds were sufficient to uphold the decision on reconsideration is moot if we find that the Legislature exceeded its power in directing reconsideration of the *School Accountability Report Cards* test claim decision. The Commission states: “[I]f the appellate court finds that the reconsideration statutes are constitutionally invalid, as argued in CSBA's cross appeal [citation], the Commission's reconsideration decision must be set aside, the alternative grounds issue is moot, and no further analysis is ****517** required.” We agree. The reconsideration statutes were invalid. Therefore, the Commission's reconsideration based on those statutes must be nullified, regardless of the decision's merits.^{FN8}

^{FN8}. The Commission requests that we take judicial notice that CSBA, ELA, and the Sweetwater Union High School District jointly filed a petition for writ of mandate and complaint for injunctive and declaratory relief against the State on October 19, 2007, challenging, among other things, the alternative grounds relied on by the Commission in the *School Accountability Report Cards* test claim. The request for judicial notice is denied because the newly-filed petition and complaint is not of substantial consequence to the determination of this action. (Evid.Code, §§ 452, subd. (d); 459.)

CSBA filed a request to submit supplemental briefing on the merits of the alternative grounds stated in the Commission's decision in the *School Accountability Report Cards* test claim. Because we do not reach the merits of the alternative grounds, we deny CSBA's request for supplemental briefing.

IV

Costs Expressly Included in Ballot Measures

[11] In its cross-appeal, CSBA contends that ballot measure mandates imposed on local governments must be reimbursed under article XIII B, section 6. It argues that the provision in the original version of

Government Code section 17556, subdivision (f), that the State need not reimburse costs resulting from “duties which were expressly included in a ballot measure approved by the voters in a statewide election” (Stats.1984, ch. 1459, § 1, p. 5119, enacting former Gov.Code, § 17556, subd. (a)(6)), was in conflict with article XIII B, section 6. We turn first to this contention. As did the trial court, we conclude that CSBA's contention is without merit, based on the plain ***1206** meaning of article XIII B, section 6. The State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates.

A. Constitutional Challenge to Legislative Enactment

[12][13] “In deciding whether the Legislature has exceeded its power, we are guided ‘by well settled rules of constitutional construction. Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] In other words, “we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.” [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: “If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.” ’ [Citations.] On the other hand, ‘we also must enforce the provisions of our Constitution and “may not lightly disregard or blink at ... a clear constitutional mandate.” ’ [Citation.]” (County of Riverside v. Superior Court (2003) 30 Cal.4th 278, 284-285, 132 Cal.Rptr.2d 713, 66 P.3d 718.)

B. Plain Meaning of the Constitutional Provision

[14] Article XIII B, section 6 requires the state to reimburse the local government ****518** “[w]henver the Legislature or any state agency mandates a new

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program or higher level of service....” Although the text refers to mandates by “the Legislature or any state agency,” which does not appear to include ballot measures passed by voters, CSBA claims that “Legislature” is ambiguous and can include the voters. It further claims that by turning to Proposition 4’s history and ballot arguments, the ambiguity must be resolved in favor of including the voters in the meaning of “Legislature.” We reject this argument because “Legislature” is not ambiguous.

[15][16] When interpreting the Constitution, we must choose the plain meaning of the provision if the language is clear and unambiguous. If the language is ambiguous, however, we turn to extrinsic evidence, such as ballot arguments. (*Silicon Valley Taxpayers Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444-445, 79 Cal.Rptr.3d 312, 187 P.3d 37.)

*1207 “Legislature” is not ambiguous in the context of reimbursement for state mandates: “The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.” (*cal. const., art. IV, § 1.*) although the “legislative power” is shared by the Legislature and the people, the two sources of legislation are distinct. If they were not distinct, it would have been unnecessary for the people to “reserve to themselves the powers of initiative and referendum.” (*Ibid.*)

Article XIII B, section 6 requires reimbursement for mandates imposed by the “Legislature” and not by ballot measures. If the voters had intended to include ballot measure mandates—that is, mandates imposed by the voters themselves—they could have done so by using (1) more general but inclusive language, such as providing that reimbursement is required whenever “the state” mandates a new program or higher level of service and (2) additional specific language, such as providing that reimbursement is required whenever “a ballot measure” mandates a new program or higher level of service. The voters did neither. Therefore, we must not read into the language of Proposition 4 an interpretation that goes beyond the plain meaning of the provision.

C. Introducing Ambiguity

But CSBA attempts to introduce ambiguity by referring to cases holding that an extension or limitation on the power of the “Legislature” in some contexts in the state Constitution includes an extension of or limitation on the people’s power of initiative. (See *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 194 Cal.Rptr. 781, 669 P.2d 17; *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 279 Cal.Rptr. 325, 806 P.2d 1360; *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 44 Cal.Rptr.3d 644, 136 P.3d 178.) This attempt to introduce ambiguity fails because the cases upon which CSBA relies are distinguishable.

1. *Legislature v. Deukmejian*

In *Legislature v. Deukmejian*, the Supreme Court considered the validity of a proposed initiative that would have realigned voting districts. At the time *Legislature v. Deukmejian* was decided, article XXI, section 1 of the California Constitution stated: “In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the ... congressional ... districts....” (Former Cal. Const., art. XXI, § 1.) The proposed **519 initiative sought to realign the districts even though the Legislature had already acted pursuant to its decennial duty. *1208(*Legislature v. Deukmejian, supra*, 34 Cal.3d at p. 663, 194 Cal.Rptr. 781, 669 P.2d 17.) The specific issue resolved by the Supreme Court was whether it should “create an exception to the constitutionally mandated and long-established rule that redistricting may occur only once within the 10-year period following a federal census.” (*Ibid.*) Assuming, without deciding, that the people have the authority to realign districts through the initiative process (*id.* at p. 673, 194 Cal.Rptr. 781, 669 P.2d 17), the court concluded that, “based upon the principle that in the enactment of statutes the constitutional limitations that bind the Legislature apply with equal force to the people’s reserved power of initiative, that such an exception cannot be justified.” (*Id.* at p. 663, 194 Cal.Rptr. 781, 669 P.2d 17.)

Contrary to CSBA’s argument, *Legislature v. Deukmejian* does not lead to the conclusion that the term “Legislature” in the Constitution applies equally to what we normally refer to as the Legislature and to the voters acting pursuant to the power of initiative and referendum. The Supreme Court specifically de-

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clined to decide whether “redistricting by initiative is permissible.” (*Legislature v. Deukmejian, supra*, 34 Cal.3d at p. 673, 194 Cal.Rptr. 781, 669 P.2d 17.) Instead, it held that, even if it is permissible, the limitations imposed by the Constitution apply to redistricting by initiative. (*Id.* at pp. 673-674, 194 Cal.Rptr. 781, 669 P.2d 17.)

This holding does not support CSBA's argument that the term “Legislature” in [article XIII B, section 6](#) includes the voters. The Constitution narrowly granted the Legislature the power to realign districts. Even if the people have the power to exercise the initiative power to realign districts, which power is not specifically granted to the people by the Constitution, such power must be limited, as is the Legislature's power. This holding did not blur the definition of “Legislature.” It simply refused to grant the people power in excess of the Legislature's as to redistricting.

2. *Kennedy Wholesale, Inc. v. State Board of Equalization*

In *Kennedy Wholesale, Inc. v. State Board of Equalization, supra*, the Supreme Court addressed the issue of whether Proposition 13 impliedly repealed the people's power to raise taxes by initiative. Proposition 13 provided, in part, that “any changes in State taxes enacted for the purpose of increasing revenues ... must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature....” Noting that the provision referred to the Legislature but not to the people's power of initiative, thereby supporting at least an inference that the people do not have the power to raise taxes, the court found the provision ambiguous because it conflicts with [article IV, section 1 of the Constitution](#), which reserves to the people the power of initiative. Based on this contextual ambiguity, the court referred to extrinsic evidence and found there was nothing to support an argument that Proposition 13 impliedly repealed the people's power to raise taxes. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization, supra*, 53 Cal.3d at pp. 248-251, 279 Cal.Rptr. 325, 806 P.2d 1360.)

*1209 CSBA claims that the *Kennedy Wholesale, Inc. v. State Board of Equalization* court “held that the reference to ‘the Legislature’ in [Proposition 13] refers both to the Legislature and to the People acting

by initiative.” We read the case differently. The court held that the two-thirds **520 majority limitation on the Legislature's power to raise taxes *did not* implicate the people's power to raise taxes by initiative with a simple majority vote. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization, supra*, 53 Cal.3d at p. 251, 279 Cal.Rptr. 325, 806 P.2d 1360.) In that way, the case makes it clear that the Legislature's lawmaking power and the people's power of initiative are separate and distinct.

3. *Independent Energy Producers Assn. v. McPherson*

In *Independent Energy Producers Assn. v. McPherson, supra*, 38 Cal.4th 1020, 44 Cal.Rptr.3d 644, 136 P.3d 178, the Supreme Court held that “language in the California Constitution recognizing the authority of the Legislature to take specified action generally is interpreted to encompass the exercise of such legislative power either by the Legislature or by the people through the initiative process.” (*Id.* at p. 1025, 44 Cal.Rptr.3d 644, 136 P.3d 178.) From this, CSBA claims that when the Constitution says “Legislature” it also means the voters, or, at least, it is ambiguous. We disagree.

The Supreme Court, in *Independent Energy Producers Assn. v. McPherson*, considered the constitutionality of a proposed ballot initiative to confer additional regulatory authority on the California Public Utilities Commission. The Court of Appeal had determined that the proposed provision was unconstitutional, based on the language of [article XII, section 5 of the Constitution](#), which states: “ ‘The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission....’ ” (*Independent Energy Producers Assn. v. McPherson, supra*, 38 Cal.4th at pp. 1031-1032, 44 Cal.Rptr.3d 644, 136 P.3d 178.)

The Supreme Court concluded that this provision does not prevent the people from acting pursuant to the power of initiative also to confer additional authority on the Public Utilities Commission. Although the language of [article XII, section 5 of the Constitution](#) gives the Legislature plenary power to confer additional authority on the commission, it is silent, and therefore ambiguous, concerning the power of the people also to confer additional authority on the

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commission. Having found this ambiguity, the court stated: “[I]n view of the long-standing California decisions establishing that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power, and in light of the background and purpose of the relevant language of [article XII, section 5](#), we conclude that this constitutional provision does not preclude the people, *1210 through their exercise of the initiative process, from conferring additional powers or authority upon the [Public Utilities Commission].” (*Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th at pp. 1043-1044, 44 Cal.Rptr.3d 644, 136 P.3d 178, fn. omitted.)

This holding that the lawmaking power given to the Legislature is generally interpreted to include the same authority given to the people acting pursuant to the power of initiative does not support the assertion that the use of the word “Legislature” in [article XIII B, section 6](#) includes ballot measures. This is so because the Constitution can (and does) limit the Legislature's power in ways that the people's power of initiative is not limited, such as requiring the Legislature to raise taxes only on a two-thirds majority vote. Accordingly, the holding in **521 *Independent Energy Producers Assn. v. McPherson* does not lead logically or rationally to the conclusion that the use of the term “Legislature” in [article XIII B, section 6](#), really means “Legislature or voters.”

4. No Contextual Ambiguity

Citing these three cases- *Legislature v. Deukmejian*; *Kennedy Wholesale, Inc. v. State Bd. of Equalization*; and *Independent Energy Producers Assn. v. McPherson*-CSBA contends that “the People's lawmaking powers are identical to the Legislature's and subject to the same limitations.” We are unconvinced that the Supreme Court's holdings in these cases create ambiguity in the use of the term “Legislature” in [article XIII B, section 6](#). As we noted above, [article IV, section 1 of the California Constitution](#) identifies the “Legislature” as the Senate and Assembly. Although in the cases cited by CSBA, the people's power of initiative, for reasons specifically associated with each of the constitutional provisions considered, has been found, to some extent, to be limited or extended in the same way that the Constitution limited or ex-

tended the Legislature's power, CSBA gives no reason, and we know of none, to go beyond the plain meaning of Proposition 4, referring to mandates imposed by “the Legislature or any state agency” in determining the meaning of the provision. “Legislature” does not include the people acting pursuant to the power of initiative. We therefore reject CSBA's assertion that [article XIII B, section 6](#), requiring reimbursement to local governments for certain state mandates, applies to ballot measures.

V

Costs Necessary to Implement and Reasonably Within the Scope of Ballot Measures

Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state, we turn to *1211 whether the further limiting of reimbursable costs in Assembly Bill No. 138 violates [article XIII B, section 6](#). We conclude that, to the extent that [Government Code section 17556](#), subdivision (f), as amended by Assembly Bill No. 138, declares that no reimbursement is necessary for costs resulting from “duties that are necessary to implement ... a ballot measure,” the amendment does not violate [article XIII B, section 6](#). However, the additional language declaring that no reimbursement is necessary for “duties that are ... reasonably within the scope of ... a ballot measure” is impermissibly broad because it allows for denial of reimbursement when reimbursement is required by [article XIII B, section 6](#).

A. *Government Code section 17556, subdivision (f), as amended*

We first consider the language of the statute to determine the scope of the issue raised by the parties. As amended by Assembly Bill No. 138, subdivision (f) of [Government Code section 17556](#) included three categories of duties imposed on local governments for which the state need not provide reimbursement. The first and narrowest category, also found in the version of the statute before the amendment, includes duties that are “expressly included in” a ballot measure. The second category includes duties that are “necessary to implement” a ballot measure. And the third and most broad category includes duties that are “reasonably within the scope of” a ballot measure. Every duty that is “expressly included in” a ballot

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measure is also “necessary to implement” and “reasonably within the scope of” that ballot measure. Also, every duty that is “necessary to implement” a ballot measure is “reasonably within the scope of” that ****522** ballot measure. But not every duty that is “reasonably within the scope of” a ballot measure is “expressly included in” or “necessary to implement” that ballot measure.

We note that, although the State defends the “necessary to implement” language of [Government Code section 17556](#), subdivision (f), it does not similarly defend the “reasonably within the scope of” language. The State asserts that the “necessary to implement” language is consistent with [article XIII B, section 6](#) and is severable from the “reasonably within the scope of” language. As will be seen, we agree with both the implicit concession that the “reasonably within the scope of” language is indefensibly broad when measured against the constitutional provision and the express argument that the “necessary to implement” language is consistent with the constitutional provision and is severable from the “reasonably within the scope of” language.

B. [San Diego Unified School District v. Commission on State Mandates](#)

Before we consider the arguments, we summarize the most recent decision from the California Supreme Court relevant to these arguments- ***1212**[San Diego Unified School Dist. v. Commission on State Mandates](#) (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 ([San Diego Unified](#)). In that case, the Supreme Court specified what costs associated with expulsion of a student from a public school were reimbursable as state mandates. The court determined that although some costs were reimbursable as state mandates, others were not because they were incidental to federal mandates and were de minimis. ^{FN9} (*Id.* at pp. 889-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

FN9. Former [Government Code section 17556](#), subdivision (c) stated that costs are not reimbursable if “[t]he statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.” (Stats.1989, ch. 589, § 1, p. 1973.)

The [San Diego Unified](#) court observed that federal due process requires certain procedural safeguards when a public school is considering expelling a student. Provisions of the Education Code in effect at the time relevant to the [San Diego Unified](#) decision mandated procedures complying with the federal due process requirements. The Education Code provisions also mandated procedures not required by federal due process, thus producing costs that were not federally mandated. The claimant recognized that it was not entitled to state reimbursement for costs that were federally mandated, but asserted a claim for those costs that resulted from state mandates that exceeded the federal due process requirements. ([San Diego Unified, supra](#), 33 Cal.4th at p. 885, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The [San Diego Unified](#) court considered the claim in the context of two scenarios: mandatory and discretionary expulsion.

First, the court considered a provision requiring a principal to recommend to the school board that a public school student be expelled if the student possessed a firearm. Because neither federal due process nor, at the time, any federal law required this recommendation of expulsion, the costs were reimbursable as a state mandate. The court reasoned that, although federal due process only required the school district to expend resources if the school district decided to pursue expulsion, the state law required it to do so. Thus, it was a reimbursable state mandate. ****523**([San Diego Unified, supra](#), 33 Cal.4th at pp. 881-883, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

Second, the [San Diego Unified](#) court considered the scenario in which the school district pursued expulsion under circumstances not required by state law. The court determined that no reimbursable costs resulted under these circumstances because, although the state law imposed requirements exceeding the requirements of federal due process, the additional state requirements were incidental to the federal requirements and imposed additional costs that ***1213** were de minimis. The court held that, “for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law-and whose costs are, in context, de minimis-should be treated as part and parcel of the underlying federal mandate.” ([San](#)

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[Diego Unified, supra](#), 33 Cal.4th at pp. 888-890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

C. Constitutionality of Statutory Language

1. Necessary to Implement

[17] The language of subdivision (f) of [Government Code section 17556](#) relieving the State of the obligation to reimburse a local government for duties “necessary to implement” a ballot measure is unobjectionable because it corresponds to the Supreme Court’s holding in [San Diego Unified](#) that state statutes codifying federal mandates are not reimbursable because they are part and parcel of the federal mandate. Therefore, contrary to the decision of the trial court, we conclude that the “necessary to implement” language of the subdivision is not inconsistent with [article XIII B, section 6](#).

In [San Diego Unified](#), some of the Education Code provisions concerning expulsions were viewed as codifying federal due process requirements. ([33 Cal.4th at p. 868, 16 Cal.Rptr.3d 466, 94 P.3d 589](#).) The court held that the Education Code provisions “adopted to implement a federal due process mandate” produce costs that are “nonreimbursable under [article XIII B, section 6](#)...” ([San Diego Unified, supra](#), at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589, italics omitted.) By the same reasoning, statutes that are adopted to implement ballot measure mandates produce costs that are nonreimbursable. Thus, the “necessary to implement” language of [Government Code section 17556](#), subdivision (f) is consistent with [article XIII B, section 6](#) because it denies reimbursement only to the extent that costs imposed by a statute are necessary to implement the ballot measure. (See [County of Riverside v. Superior Court, supra](#), 30 Cal.4th pp. 284-285, 132 Cal.Rptr.2d 713, 66 P.3d 718 [holding that Legislature has power to legislate limited only by Constitution].) Therefore, the “necessary to implement” language of [Government Code section 17556](#), subdivision (f) does not violate [article XIII B, section 6](#).

But CSBA objects to this application of the [San Diego Unified](#) holding. It asserts that we cannot import the analysis from [San Diego Unified](#) to this case because (1) the provisions concerning federal mandates and ballot measure mandates in [Government Code section 17556](#), subdivisions (c) and (f) are

worded differently and (2) federal mandates and ballot measure mandates are not treated the same in the spending limit provisions of Proposition 4, found at [article XIII B, section 9 of the Constitution](#). Neither argument has merit.

As CSBA observes, the two subdivisions of [Government Code section 17556](#) concerning federal mandates and ballot measure mandates feature *1214 different wording. Subdivision (c) provides that costs are nonreimbursable**524 if “[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.” Subdivision (f) approaches the same issue from a different angle, stating that costs are nonreimbursable if “[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election.”

The difference in wording is that subdivision (c) refers to “impos[ing] a requirement that is mandated by federal law,” while subdivision (f) refers to “impos[ing] duties that are necessary to implement ... a ballot measure.” ([Gov.Code, § 17556](#).) Although the wording is different, there is no difference in the effect when considering the interpretation placed on subdivision (c) by the [San Diego Unified](#) court. There, the court stated that statutes “adopted to implement” federal law are nonreimbursable. Subdivision (f) is even more restrictive, stating that there is no reimbursement obligation if the statute is “necessary to implement” a ballot measure. Therefore, the difference in wording does not support an argument that the “necessary to implement” language of [Government Code section 17556](#), subdivision (f) violates [article XIII B, section 6](#).

[18] Proposition 4 limited the spending authority of state and local government. ([Department of Finance v. Commission on State Mandates \(2003\) 30 Cal.4th 727, 735, 134 Cal.Rptr.2d 237, 68 P.3d 1203](#).) Not included in that spending limitation, however, is spending required to comply with a federal mandate. ([Cal. Const., art. XIII B, § 9\(b\)](#).) There is no similar exception for spending required to comply with ballot measure mandates. Citing this difference, CSBA argues that relieving the state of its reimbursement ob-

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ligation for ballot measure mandates is unjustified. This argument fails because it is, at its core, a policy argument. It posits that the Legislature should not be able to impose nonreimbursable costs if the costs are not excepted from the constitutional spending limits. Nonetheless, that is the Legislature's prerogative, as long as it does not violate the Constitution. "The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53, 51 Cal.Rptr.2d 837, 913 P.2d 1046.)

CSBA's objections to the application of the *San Diego Unified* decision to the interpretation of [Government Code section 17556](#), *1215 subdivision (f) are without merit. We therefore conclude that, to the extent that [Government Code section 17556](#), subdivision (f) allows the Legislature to impose on local governments nonreimbursable costs resulting from duties that are "necessary to implement" or "expressly included in" a ballot measure, it does not violate [article XIII B, section 6](#).

2. Reasonably Within the Scope Of

[19] As we noted above, the State makes no attempt to defend the "reasonably within the scope of" language of [Government Code section 17556](#), subdivision (f). And for good reason. That language is so broad that it cannot be used as a standard for determining whether the State must reimburse the local government for having imposed a duty resulting in costs. Determining whether such a duty is reasonably within the scope of a **525 ballot measure lends itself to sweeping imposition of duties on local governments without reimbursement, contrary to the intent of Proposition 4. The State offers no interpretation of the language that would properly limit the language to be consistent with Proposition 4.

One example suffices to show that the "reasonably within the scope of" language is overly broad. As we discussed with respect to the *Open Meetings Act* and *Brown Act Reform* test claims, the Commission had decided that the costs imposed on local governments under these acts constituted reimbursable state mandates. Then, in 2004, the voters passed Proposition

59, generally stating that the people have the right to governmental transparency. ([Cal. Const., art. I, § 3\(b\)\(1\)](#).) Any statute that has anything to do with open government is "reasonably within the scope of" Proposition 59. However, it is unlikely that the voters intended to grant carte blanche to the Legislature to impose unlimited, unreimbursable costs on local governments for all duties associated with open government. Because the phrase "reasonably within the scope of" so clearly contravenes the intent the voters in passing Proposition 4, that language must be limited.

In light of the remaining language of the subdivision, relieving the State of the obligation to reimburse local governments if the duty is "expressly included in" or "necessary to implement" a ballot measure, which phrases are much more limited than "reasonably within the scope of," the best course—the course that is consistent with Proposition 4—is to interpret "reasonably within the scope of" to extend only to duties that are "expressly included in" or "necessary to implement" ballot measures. This may be seen as a limiting *1216 of the language to what is constitutionally permissible or as a severance of the "reasonably within the scope of" language from the subdivision. Either way, it limits the expansive language in a workable and constitutionally permissible solution.

If this limiting of the phrase "reasonably within the scope of" amounts to a severance of that language from the statute, we consider such severance justified and proper.^{FN10} "[A] statute that is invalid as inconsistent with the California Constitution is not ineffective and inoperative to the extent that its invalid parts can be severed from any valid ones. [Citation.] An invalid part can be severed if, and only if, it is 'grammatically, functionally and volitionally separable.' [Citation.] It is 'grammatically' separable if it is 'distinct' and 'separate' and, hence, 'can be removed as a whole without affecting the wording of any' of the measure's 'other provisions.' [Citation.] It is 'functionally' separable if it is not necessary to the measure's operation and purpose. [Citation.] And it is 'volitionally' separable if it was not of critical importance to the measure's enactment. [Citation.]" (*Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 613, 88 Cal.Rptr.2d 56, 981 P.2d 990.)

FN10. CSBA argues that we should not con-

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sider the severability of the “reasonably within the scope of” language because severability was not raised by the State in its trial court arguments. We decline to take such a myopic course. The issue to be resolved is the proper interpretation of [Government Code section 17556](#), subdivision (f) within constitutional restraints. That general issue was argued in the trial court, and it would serve no valid purpose to ignore the application of severability to that issue.

“Reasonably within the scope of” is grammatically, functionally and volitionally separable from the remainder of [Government Code section 17556](#), subdivision (f). Grammatically, it can be taken out without harming the meaning of any other part of ****526** the subdivision. Functionally, it is not necessary to the overall operation and purpose of the subdivision, which still defines the limits of the state’s obligation to reimburse local governments. And volitionally, the severance does not affect the Legislature’s apparent purpose to limit, to the extent allowed by the Constitution, its obligation to reimburse local governments. “Reasonably within the scope of,” therefore, can and must be severed from the remaining language in [Government Code section 17556](#), subdivision (f).

3. Incidental and De Minimis

[20] We also conclude that statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the ballot measure mandate and produce at most de minimis added costs. (*San Diego Unified, supra*, 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

*1217 In *San Diego Unified*, the court considered whether costs resulting from statutes that were not adopted to implement federal due process requirements were reimbursable under [article XIII B, section 6](#), and [Government Code section 17556](#), subdivision (c). The court determined that “the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections.” (*San Diego Unified, supra*, 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589.) It also determined that the statutes, “viewed singly or cumulatively, [] did not significantly increase the cost of compliance with

the federal mandate.” (*Ibid.*) The court concluded that, “for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law and whose costs are, in context, de minimis should be treated as part and parcel of the underlying federal mandate.” (*Id.* at p. 890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

There is no reason not to apply this practical holding similarly to ballot measure mandates. Thus, the Commission must consider the holding of *San Diego Unified* in determining whether costs are reimbursable for ballot measure mandates.

D. Remand

We are not in a position to determine whether, under our interpretation of [Government Code section 17556](#), subdivision (f), the State is obligated to provide reimbursement with respect to the *Mandate Reimbursement Process II* test claim. Because there was no case interpreting the subdivision, the Commission was required to apply it, as written. Therefore, the Commission must have the opportunity to resolve the question first. (See *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920, 58 Cal.Rptr.3d 762 [Commission resolves mandates questions first].)

In the *Mandate Reimbursement Process II* test claim decision, the Commission noted that it had no authority to refuse to apply [Government Code section 17556](#), subdivision (f), even if the subdivision was inconsistent with the Constitution. Now that we have held that the subdivision is, in part, inconsistent with [article XIII B, section 6](#), and must be interpreted to eliminate that inconsistency, the Commission can apply the subdivision properly.^{FN11}

^{FN11}. Assembly Bill No. 138 also inserted the following language into [Government Code section 17556](#), subdivision (f): “This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.” (Stats.2005, ch. 72, § 7.) There is no reason, in this case, to opine concerning the validity of this provision.

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***1218 **527 DISPOSITION**

The judgment is reversed in part and affirmed in part. The trial court is directed to modify the judgment consistent with this opinion and to modify its writ of mandate to direct the Commission to set aside the decisions challenged in this action with respect to the *Open Meetings Act* and *Brown Act Reform* test claims, the *Mandate Reimbursement I* test claim, and the *School Accountability Report Cards* test claim and to reinstate the prior decisions. The writ must also be modified to direct the Commission to reconsider the *Mandate Reimbursement Process II* test claim in a manner consistent with this opinion. Each party shall bear its own costs on appeal.

We concur: [ROBIE](#) and [CANTIL-SAKAUYE, JJ.](#)
Cal.App. 3 Dist., 2009.
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(Cite as: **188 Cal.App.4th 794, 116 Cal.Rptr.3d 33**)

H

Court of Appeal, Third District, California.
CLOVIS UNIFIED SCHOOL DISTRICT et al.,
Plaintiffs and Appellants,

v.

John CHIANG, as State Controller, etc., Defendant
and Appellant.
No. C061696.

Sept. 21, 2010.

As Modified on Denial of Rehearing Oct. 14, 2010.

Background: School districts and community college districts brought action against State Controller's Office for declaratory and writ relief challenging auditing rules used in reducing state-mandated reimbursement claims for employee salary and benefit costs. The Superior Court, Sacramento County, No. 06CS00748 and 07CS00263, [Lloyd G. Connelly](#), J., invalidated the Contemporaneous Source Document Rule (CSDR) as applied to Intradistrict Attendance Program and Collective Bargaining Program, granted no relief as to CSDR as applied to the School District of Choice Program (SDC) and the Emergency Procedures, Earthquake Procedures and Disasters Program (EPEPD), and upheld the Health Fee Rule. Plaintiffs appealed.

Holdings: The Court of Appeal, [Butz](#), J., held that:
(1) CSDR implemented, interpreted, or made specific the regulatory Parameters and Guidelines (P&Gs) applied to state-mandated reimbursement claims;
(2) declaratory and traditional mandate relief was appropriate form of relief for use of CSDR as underground regulation; and
(3) amount of optional student fee was deducted from amount reimbursed to community college districts for state-mandated costs.

Reversed in part with directions and affirmed in part.

West Headnotes

[1] Declaratory Judgment 118A  **255**

[118A](#) Declaratory Judgment
[118AIII](#) Proceedings

[118AIII\(A\)](#) In General

[118Ak255](#) k. Limitations and laches. [Most Cited Cases](#)

Mandamus 250  **143(1)**

[250](#) Mandamus

[250III](#) Jurisdiction, Proceedings, and Relief

[250k143](#) Time to Sue, Limitations, and Laches

[250k143\(1\)](#) k. In general. [Most Cited Cases](#)

States 360  **111**

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

School districts' and community college districts' action against State Controller's Office, for declaratory and writ relief challenging audits that reduced state-mandated reimbursement claims for employee salary and benefit costs based on an auditing rule which was an invalid underground regulation in violation of the state Administrative Procedure Act (APA), was subject to the three-year statute of limitations for lawsuits based on statutory liability, since state-mandated reimbursement was a statutory liability. [West's Ann.Cal.C.C.P. § 338\(a\)](#); [West's Ann.Cal.Gov.Code §§ 11340 et seq., 17500 et seq.](#)

[2] Administrative Law and Procedure 15A  **382.1**

[15A](#) Administrative Law and Procedure

[15AIV](#) Powers and Proceedings of Administrative Agencies, Officers and Agents

[15AIV\(C\)](#) Rules and Regulations

[15Ak382](#) Nature and Scope

[15Ak382.1](#) k. In general. [Most Cited](#)

[Cases](#)

An Administrative Procedure Act (APA) regulation has two principal characteristics: it must apply generally; and it must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure. [West's Ann.Cal.Gov.Code § 11342.600.](#)

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[3] Administrative Law and Procedure 15A **382.1**

[15A](#) Administrative Law and Procedure

[15AIV](#) Powers and Proceedings of Administrative Agencies, Officers and Agents

[15AIV\(C\)](#) Rules and Regulations

[15Ak382](#) Nature and Scope

[15Ak382.1](#) k. In general. [Most Cited](#)

[Cases](#)

For a regulation to “apply generally,” as required to be subject to the Administrative Procedure Act (APA), the rule need not apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. [West's Ann.Cal.Gov.Code § 11342.600](#).

[4] States 360 **121**

[360](#) States

[360IV](#) Fiscal Management, Public Debt, and Securities

[360k121](#) k. Administration of finances in general. [Most Cited Cases](#)

State Controller's Office's Contemporaneous Source Document Rule (CSDR) applied generally, as required to be a regulation subject to the Administrative Procedure Act (APA), where the CSDR was applied generally to the auditing of reimbursement claims, and the Controller's auditors had no discretion to judge on a case-by-case basis whether to apply the CSDR. [West's Ann.Cal.Gov.Code § 11342.600](#).

[5] States 360 **111**

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

State Controller's Office's Contemporaneous Source Document Rule (CSDR) implemented, interpreted, or made specific the regulatory Parameters and Guidelines (P&Gs) applied to state-mandated reimbursement claims for the School District of Choice (SDC) Program in effect before May 27, 2004, and thus was a regulation subject to the Administrative Procedure Act (APA), since there were substantive differences between the CSDR and the P&Gs then in effect; the CSDR barred the use of employee time declarations and certifications as source documents or equivalents even though the P&Gs had nothing to say on that

subject, and the CSDR did not countenance the use of documented estimates even though such estimates were allowable under the P&Gs. [West's Ann.Cal.Gov.Code §§ 11342.600, 17557, 17558.5\(a\)](#); [West's Ann.Cal.Educ.Code § 48209.9](#) (Repealed).

[6] States 360 **111**

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

State Controller's Office's Contemporaneous Source Document Rule (CSDR) implemented, interpreted, or made specific the regulatory Parameters and Guidelines (P&Gs) applied to state-mandated reimbursement claims for the Emergency Procedures, Earthquake Procedures and Disasters Program (EPEPD), and thus was a regulation subject to the Administrative Procedure Act (APA), since there were substantive differences between the CSDR and the P&Gs then in effect; unlike the P&Gs, the CSDR barred the use of employee time declarations and certifications as source documents, and the CSDR did not countenance the use of documented estimates. [West's Ann.Cal.Gov.Code §§ 11342.600, 17557, 17558.5\(a\)](#); [West's Ann.Cal.Educ.Code §§ 35925-35927, 40041.5, 40042](#) (Repealed).

[7] States 360 **111**

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

State Controller's Office's Contemporaneous Source Document Rule (CSDR) implemented, interpreted, or made specific the regulatory Parameters and Guidelines (P&Gs) applied to state-mandated reimbursement claims for the Intradistrict Attendance Program, and thus was a regulation subject to the Administrative Procedure Act (APA), since there were substantive differences between the CSDR and the P&Gs then in effect; unlike the P&Gs, the CSDR barred the use of time studies or employee time declarations and certifications as source documents. [West's Ann.Cal.Gov.Code §§ 11342.600, 17557, 17558.5\(a\)](#); [West's Ann.Cal.Educ.Code § 35160.5](#).

[8] States 360 **111**

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[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)
State Controller's Office's Contemporaneous Source Document Rule (CSDR) implemented, interpreted, or made specific the regulatory Parameters and Guidelines (P&Gs) applied to state-mandated reimbursement claims for the school district Collective Bargaining Program, and thus was a regulation subject to the Administrative Procedure Act (APA), since there were substantive differences between the CSDR and the P&Gs then in effect; unlike the P&Gs, the CSDR required source documents. [West's Ann.Cal.Gov.Code §§ 3540 et seq., 11342.600, 17557, 17558.5\(a\)](#).

[9I](#) Declaratory Judgment 118A ↪ 204

[118A](#) Declaratory Judgment

[118AII](#) Subjects of Declaratory Relief

[118AII\(K\)](#) Public Officers and Agencies

[118Ak204](#) k. State officers and boards. [Most Cited Cases](#)

Declaratory Judgment 118A ↪ 210

[118A](#) Declaratory Judgment

[118AII](#) Subjects of Declaratory Relief

[118AII\(K\)](#) Public Officers and Agencies

[118Ak210](#) k. Schools and school districts.
[Most Cited Cases](#)

Mandamus 250 ↪ 79

[250](#) Mandamus

[250II](#) Subjects and Purposes of Relief

[250II\(B\)](#) Acts and Proceedings of Public Officers and Boards and Municipalities

[250k79](#) k. Establishment, maintenance, and management of schools. [Most Cited Cases](#)

Declaratory and accompanying traditional mandate relief was an appropriate form of relief, for school districts' challenge to State Controller's Office's policy of using an underground regulation to conduct audits in violation of the Administrative Procedure Act (APA), even though the underground regulation was later incorporated into valid regulations, where the dispute related to audit determinations under the

invalid regulation which did not become final prior to the applicable statute of limitations, and there was no adequate administrative remedy because the Commission on State Mandates consistently refused to rule on underground regulation claims. [West's Ann.Cal.Gov.Code § 11350](#).

[10I](#) Evidence 157 ↪ 47

[157](#) Evidence

[157I](#) Judicial Notice

[157k47](#) k. Administrative rules and regulations. [Most Cited Cases](#)

In appeal from trial court's partial grant of declaratory and writ relief against underground regulations used by State Controller's Office in reducing state-mandated reimbursement claims for employee salary and benefit costs, Court of Appeal would not take judicial notice of a subsequent amendment of the regulatory Parameters and Guidelines (P&Gs) applied to the reimbursement claims, which brought the underground regulations into compliance with the Administrative Procedure Act (APA) after the time period at issue in the lawsuit. [West's Ann.Cal.Gov.Code §§ 11340 et seq., 17500 et seq.](#)

[11I](#) Evidence 157 ↪ 48

[157](#) Evidence

[157I](#) Judicial Notice

[157k48](#) k. Official proceedings and acts. [Most Cited Cases](#)

In appeal from trial court's partial grant of declaratory and writ relief against underground regulations used by State Controller's Office in reducing school districts' and community college districts' state-mandated reimbursement claims for employee salary and benefit costs, Court of Appeal would not take judicial notice of the Commission on State Mandates Incorrect Reduction Claim caseload summary or the Controller's list of final audit reports for California school districts and community college districts. [West's Ann.Cal.Gov.Code § 17558.7\(a\)](#).

[12I](#) States 360 ↪ 111

[360](#) States

[360III](#) Property, Contracts, and Liabilities

[360k111](#) k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

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Under the statutes requiring reimbursement to local government for state-mandated costs, the amount of an optional student health fee was deducted from the amount reimbursed to community college districts for the state-mandated cost of the Health Fee Elimination Program, even when districts chose not to charge their students those fees. [West's Ann.Cal.Gov.Code §§ 17514, 17556\(d\)](#); [West's Ann.Cal.Educ.Code § 76355\(a\)\(1\)](#); § 72246 (Repealed).

See [Cal. Jur. 3d, State of California, § 104](#); [9 Witkin, Summary of Cal. Law \(10th ed. 2005\) Taxation, § 121](#).

[13] States 360 ↪ **111**

360 States

360III Property, Contracts, and Liabilities

360k111 k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

To the extent a local agency or school district has the authority to charge for a state-mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. [West's Ann.Cal. Const. Art. 13B, § 6](#); [West's Ann.Cal.Gov.Code §§ 17514, 17556\(d\)](#).

[14] States 360 ↪ **111**

360 States

360III Property, Contracts, and Liabilities

360k111 k. State expenses and charges and statutory liabilities. [Most Cited Cases](#)

State Controller's Office had the authority to rely on the Government Code, rather than only on the Parameters and Guidelines (P&Gs) adopted by the Commission on State Mandates, to uphold an audit rule excluding the amount of optional fees from the amount recoverable as state-mandated costs. [West's Ann.Cal.Gov.Code §§ 17514, 17556\(d\)](#).

****36** Lozano Smith, [Gregory A. Wedner](#) and [Sloan R. Simmons](#), Sacramento, for Plaintiffs and Appellants.

[Richard L. Hamilton](#) for California School Boards Association and Its Education Legal Alliance, as Amicus Curiae on behalf of Plaintiffs and Appellants Clovis Unified School District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Juan Unified School District and Sweetwater Union High School District.

Edmund G. Brown, Jr., Attorney General, Jonathan K.

Renner, Assistant Attorney General, [Douglas J. Woods](#) and Kathleen A. Lynch, Deputy Attorneys General, for Defendant and Appellant.

[BUTZ, J.](#)

***797** This declaratory relief and writ of mandate action concerns the validity of two auditing rules used by defendant State Controller's Office (Controller). The Controller used these rules in reducing state-mandated reimbursement claims for employee salary and benefit costs submitted from plaintiff school districts and community college districts (hereafter plaintiffs).

Contemporaneous Source Document Rule (CSDR)

The first auditing rule is referred to by plaintiffs as the Contemporaneous Source Document Rule (CSDR). The Controller used this rule to reduce reimbursement claims for the following four state-mandated school district programs during the challenged period straddling fiscal years 1998 to 2003: (1) the School District of Choice Program (SDC); (2) the Emergency Procedures, Earthquake Procedures and Disasters Program (EPEPD); (3) the ***798** Intradistrict Attendance Program; and (4) the Collective Bargaining Program. We conclude this rule was an invalid underground regulation under the state Administrative Procedure Act (APA) during this period. ([Gov.Code, § 11340 et seq.](#)) ^{FN1} Consequently, we overturn the Controller's audits for these four programs during this period to the extent they were based on this rule.

[FN1.](#) Undesignated statutory references are to the Government Code.

Health Fee Elimination Program: Health Fee Rule

The second auditing rule is the Health Fee Rule, which the Controller used to reduce reimbursement claims for state-****37** mandated health services provided by the plaintiff community college districts pursuant to the Health Fee Elimination Program. We uphold the validity of this rule.

The trial court: (1) invalidated the CSDR as applied to the Intradistrict Attendance and Collective Bargaining Programs (from which the Controller appeals); (2) hinted at the CSDR's invalidity as applied to the SDC and EPEPD Programs but did not grant relief thereon,

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apparently deeming the administrative remedy sufficient (from which the school districts appeal); and (3) upheld the validity of the Health Fee Rule (from which the community college districts appeal). We shall affirm the judgment regarding the Intradistrict Attendance Program, the Collective Bargaining Program, and the Health Fee Rule, but reverse the judgment, with directions, regarding the SDC and EPEPD Programs.

Because the issues raised in this appeal are almost entirely legal ones subject to our independent review (see *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 434, 268 Cal.Rptr. 244, disapproved on a different ground in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 927 P.2d 296 (*Tidewater*)) [whether an auditing rule is an APA regulation is a question of law], it is unnecessary to set forth a factual background at this stage. Instead, we will proceed straight to our discussion. First, we will briefly summarize the process of state-mandated reimbursement and the concept of underground regulation. Then we will turn our attention to the programs and remedies at issue, weaving in the pertinent facts as we go.

DISCUSSION

I. State-mandated Reimbursement Process

In 1979, California's voters adopted [article XIII B, section 6, of the state Constitution](#), which specifies that if the state imposes any “new program *799 or higher level of service” on any local government (including a school district), the state must reimburse the locality for the costs of the program or increased level of service.

In 1984, the Legislature enacted statutes to govern the state mandate process. ([§ 17500 et seq.](#)) Under these statutes, the Commission on State Mandates (the Commission) determines, pursuant to a “test claim” process, whether a state program constitutes a reimbursable state mandate. (§§ 17551, subd. (c), 17553.)

Once the Commission determines that a state mandate exists, it adopts regulatory “[P]arameters and [G]uidelines” (P & G's) to govern the state-mandated reimbursement. ([§ 17557.](#)) The Controller, in turn, then issues nonregulatory “[C]laiming [I]nstructions” for each Commission-determined mandate; these

instructions must derive from the Commission's test claim decision and its adopted P & G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs.

The Controller may audit a reimbursement claim filed by a local agency or school district within three years of the claim's filing or last amendment. ([§ 17558.5](#), subd. (a).)

If the Controller reduces a specific reimbursement claim via an audit, the claimant may file an “[I]ncorrect [R]eduction [C]laim” with the Commission. ([§ 17558.7](#), subd. (a).)

II. The Concept of Invalid Underground Regulation

[1] In their petitions for writ of mandate and complaints for declaratory relief, the school districts (comprising Clovis, **38 Fremont, Newport-Mesa, Norwalk-La Mirada, Riverside, Sweetwater, and San Juan; hereafter collectively, School Districts) allege that the CSDR constitutes an invalid, unenforceable underground regulation under the APA as applied by the Controller in auditing salary and benefit costs in reimbursement claims for the SDC, EPEPD, Intradistrict Attendance, and Collective Bargaining Programs during the applicable periods roughly encompassing the fiscal years 1998 to 2003.^{[FN2](#)}

[FN2.](#) Because of the large number of school districts and program audits involved, as well as the slightly varying fiscal years at issue corresponding to these districts and program audits, we will use the general phrasing “applicable periods roughly encompassing the fiscal years 1998 to 2003” to describe the audits at issue. The parties are well aware of the particular audits being challenged for this period. Regardless, the School Districts must meet the applicable three-year statute of limitations that governs lawsuits based on statutory liability (like state-mandated reimbursement) for any audits of the four programs that have been determined on the basis of the invalidated CSDR. ([Code Civ. Proc., § 338](#); [Union of American Physicians & Dentists v. Kizer](#) (1990) 223 Cal.App.3d 490, 504, *fn. 5*, 272 Cal.Rptr. 886.) San Juan School District filed its petition and com-

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plaint on March 2, 2007. The rest of the School Districts, together, filed their petition and complaint on May 23, 2006. The trial court consolidated these two petitions and complaints on March 27, 2007.

The School Districts made challenges to other programs as well, but these challenges are not at issue on appeal.

***800** In their petition for writ of mandate and complaint for declaratory relief (actually appended to the School Districts' petition and complaint), the community college districts (comprising San Mateo, Santa Monica, State Center, and El Camino; hereafter collectively, College Districts) allege that the Health Fee Rule constitutes an invalid, unenforceable underground regulation under the APA as applied by the Controller in auditing reimbursement claims for the Health Fee Elimination Program or, alternatively, that the Controller's auditing actions in this respect were beyond its lawful authority.

The basic legal principles that apply to these allegations are as follows:

“ ‘If a rule constitutes a “regulation” within the meaning of the APA (other than an “emergency regulation” ...) it may not be adopted, amended, or repealed except in conformity with “basic minimum procedural requirements” ’ ” that include public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law. (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 333, 42 Cal.Rptr.3d 47, 132 P.3d 249 (*Morning Star*).) “These requirements promote the APA's goals of bureaucratic responsiveness and public engagement in agency rule-making.” (*Ibid.*)

Any regulation “ ‘that substantially fails to comply with these requirements may be judicially declared invalid’ ” and is deemed unenforceable. (*Morning Star, supra*, 38 Cal.4th at p. 333, 42 Cal.Rptr.3d 47, 132 P.3d 249; § 11350, subd. (a).)

[2] A “regulation” under the APA “means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the

law enforced or administered by it, or to govern its procedure.” (§ 11342.600.) As we will later explain more fully, an APA regulation has two principal characteristics: It must apply generally; and it must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure. (*Morning Star, supra*, 38 Cal.4th at pp. 333-334, 42 Cal.Rptr.3d 47, 132 P.3d 249; ****39***Tidewater, supra*, 14 Cal.4th at p. 571, 59 Cal.Rptr.2d 186, 927 P.2d 296.)

***801 III. The CSDR as Applied to the SDC, EPEPD, Intradistrict Attendance, and Collective Bargaining Programs**

We will start with the SDC Program. We do so because, of these four programs, the Commission's APA-valid, pre-May 27, 2004 P & G's for the SDC Program most closely resemble the Controller's CSDR.^{FN3} If we conclude, nevertheless, that the CSDR is an underground regulation that violates the APA in this context, we will have to conclude similarly for these three other programs. It is undisputed that the Controller's CSDR was not enacted in compliance with APA procedure.

^{FN3}. On May 27, 2004, the Commission validly amended its SDC P & G's to adopt this CSDR language.

As we shall explain, we conclude that the CSDR, as applied to the (pre-May 27, 2004) SDC Program, is an underground, unenforceable regulation under the APA. Accordingly, the CSDR is invalid as applied to the School Districts' SDC Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003 (see fn. 2, *ante*), and invalid in parallel fashion to the three other programs as well.

The Commission determined, in the mid-1990's, that the SDC Program imposed a reimbursable state-mandated program on school districts by establishing the right of parents/guardians of students, who were prohibited from transferring to another school district, to appeal to the county board of education. (See former *Ed.Code*, § 48209.9, inoperative July 1, 2003.)

From August 24, 1995, until May 27, 2004, the Commission's P & G's for the SDC Program set forth the following two requirements for school districts

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seeking SDC state-mandated reimbursement for employee salary and benefit costs: (1) “Identify the employee(s) and their job classification, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study”; and (2) “For auditing purposes, all costs claimed must be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs.”

The Commission's SDC P & G's divide the subject of reimbursable costs into three categories: employee salaries and benefits; materials and supplies; and contracted services. The examples set forth in these P & G's for “source *802 documents” align with these three categories: “employee time records” for employee salaries and benefits; “invoices,” “receipts” and “purchase orders” for materials and supplies; and “contracts” for contracted services. At issue in this appeal for the SDC, EPEPD, Intradistrict Attendance, and Collective Bargaining Programs are just the cost category of employee salaries and benefits.

From the initial issuance of the Commission's SDC P & G's in 1995 until May 27, 2004, the Controller's SDC-specific Claiming Instructions substantively aligned with the SDC P & G's.

However, in September 2003, the Controller revised its general Claiming Instructions (that apply to state-mandated reimbursement claims in general) to set **40 forth, for the first time, what has become known as the CSDR. The CSDR states:

“To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

“Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, ‘I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.’ Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.”

Substantial evidence showed that prior to the use of the CSDR in Controller audits, school districts obtained SDC state-mandated reimbursement for employee salary and benefit costs based on (1) declarations and certifications from the employees that set forth, after the fact, the time they had spent on SDC-mandated tasks; or (2) an annual accounting of time determined by the number of mandated activities and the average time for each activity. After the Controller began using the CSDR in its auditing of SDC reimbursement claims, the Controller deemed these declarations, certifications, and accounting methods insufficient, and reduced the *803 reimbursement claims accordingly. (Substantial evidence also showed that the Controller, in 2000, began applying a CSDR requirement in field audits of SDC reimbursement claims, before the CSDR was expressed in the Controller's general Claiming Instructions in September 2003 or adopted in the Commission's SDC P & G's on May 27, 2004.)

The question is whether the Controller's CSDR constituted an underground, unenforceable regulation that the Controller used in auditing the School Districts' SDC Program for the fiscal years 1998 to 2003, because the CSDR constituted a state agency regulation that was not adopted in conformance with the APA prior to its valid adoption in the Commission's SDC P & G's on May 27, 2004. We answer this question “yes.”

[3] “ ‘A regulation subject to the APA ... has two principal identifying characteristics. [Citation.] First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so

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long as it declares how a certain class of cases will be decided. [Citation.] *Second*, the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.”” (*Morning Star, supra*, 38 Cal.4th at pp. 333-334, 42 Cal.Rptr.3d 47, 132 P.3d 249, quoting *Tidewater, supra*, 14 Cal.4th at p. 571, 59 Cal.Rptr.2d 186, 927 P.2d 296, italics added.)

[4] As to the first criterion-whether the rule is intended to apply generally-substantial evidence supports the trial **41 court's finding that the CSDR was “applied generally to the auditing of reimbursement claims ...; the Controller's auditors ha[d] no discretion to judge on a case[-]by[-]case basis whether to apply the rule.” (The trial court made this finding in the context of ruling on the Intradistrict Attendance and Collective Bargaining Programs, but this finding is a general one that applies equally to the SDC Program. The trial court did not apply this general finding to the SDC Program only because the court reasoned that the CSDR was not an APA-violative underground regulation in the SDC context, as the Commission later adopted the CSDR into its SDC P & G's (see fn. 3, *ante*). As we shall explain later, we reject this reasoning involving subsequent adoption.)

[5] The CSDR also meets the second criterion of being a regulation: It implements, interprets, or makes specific the law enforced or administered by the Controller. The Controller argues, to the contrary, that the CSDR “merely restates” the source document requirement found in the pre-May 27, 2004 Commission P & G's for the SDC Program, and that “source documents” are, by their sourceful nature, contemporaneous. As we explain, we reject this argument.

Admittedly, the pre-May 27, 2004 SDC P & G's stated that, “[f]or auditing purposes, all costs claimed must be traceable to source documents (e.g., *804 employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs.” However, the Controller's CSDR, in contrast to these P & G's, did not equate “source documents” with “worksheets,” but relegated “worksheets” to the second-class status of “corroborating documents” that can only serve as evidence that corroborates “source documents.” This is no small matter either. This is because, prior to the Controller using the CSDR to audit reimbursement claims, the School Districts, in

making these claims, had used employee declarations and certifications and average time accountings to document the employee time spent on SDC-mandated activities; and such methods can be deemed akin to worksheets.

More significantly, the CSDR expressly states that employee declarations and certifications are only corroborating documents, *not* source documents; the pre-May 27, 2004 SDC P & G's had nothing to say on this subject. In effect, then, the CSDR bars the use of employee time declarations and certifications as source documents or source document-equivalent worksheets, in contrast to the pre-May 27, 2004 P & G's.

Along similar lines, the pre-May 27, 2004 SDC P & G's also stated that the “average number of [employee] hours devoted to each [mandated] function may be claimed if supported by a documented time study”; the record showed that such a time study is a documented estimate. The CSDR, which recognizes only actual costs traceable and supported by contemporaneous source documents, does not countenance such estimation.

Nor may the Controller point to the examples of the source documents listed in the pre-May 27, 2004 SDC P & G's and argue they show the contemporaneous nature of source documents: “employee time records, invoices, receipts, purchase orders, contracts, etc.” First, this argument ignores the source document-equivalent of “worksheets” set forth in these P & G's, as discussed above. And, second, while the CSDR lists “employee time records,” “invoices,” and “receipts” as source documents, it specifies that “purchase orders,” “contracts” (and “worksheets”) are only **42 corroborating documents, not source documents.

Finally, the School Districts that had used employee declarations and certifications and average time accountings to document time for reimbursement claims also note that it is *now* physically impossible to comply with the CSDR's requirement of contemporaneousness that “[a] source document is a *805 document *created at or near the same time the actual cost was incurred* for the event or activity in question.” FN4 (Italics added.)

FN4. As a related aside, it is interesting to

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note that the Controller's SDC-specific Claiming Instructions that were in place during the pre-2004 P & G's stated that, "[f]or audit purposes, all supporting documents must be retained [by claimant] [only] for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later"; but the Controller had three years in which to conduct a reimbursement audit "after the date that the actual reimbursement claim is filed or last amended, whichever is later." (§ 17558.5, subd. (a).)

Given these substantive differences between the Commission's pre-May 27, 2004 SDC P & G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P & G's for the SDC Program (§ 17558) [the Commission submits regulatory P & G's to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561, subd. (d)(2)).

Consequently, the CSDR meets the two criteria for being an APA regulation. And because the CSDR, as applied to the SDC Program, was not adopted as a regulation in compliance with the APA rule-making procedures until its May 27, 2004 incorporation into the SDC P & G's, this CSDR is an underground and unenforceable regulation as applied to the audits of the School Districts' SDC Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003. (See fn. 2, *ante*.) These audits are invalidated to the extent they used this CSDR.

[6][7][8] As we noted at the outset of this part of the opinion, if we were to conclude (as we now have done) that the CSDR is an underground regulation that violates the APA in the SDC Program context presented here, we would have to conclude similarly for the EPEPD, Intradistrict Attendance, and Collective Bargaining Programs too. This is because the Commission's P & G's for these latter three programs less resembled the Controller's CSDR than did the Commission's pre-May 27, 2004 P & G's for the SDC Program. We now turn to the EPEPD, Intradistrict Attendance, and Collective Bargaining Programs,

which we will describe briefly in order.

The EPEPD Program was found to be a reimbursable state-mandated program in 1987. This program requires school districts to establish earthquake procedures for each of its school buildings, and to allow use of its buildings, grounds and equipment for mass care and welfare shelters during public disasters or emergencies. (Former Ed.Code, §§ 35925-35927, [40041.5](#), [40042](#).)

806** From 1991 until June 2, 2003, the Commission's P & G's for the EPEPD Program required school districts seeking state-mandated reimbursement for employee salary and benefit costs: (1) to "provide a listing of each employee ... and the number of hours devoted to their [mandated] function"; and (2) "[f]or auditing purposes, all costs claimed may be *43** traceable to source documents and/or worksheets that show evidence of the validity of such costs." The Controller's EPEPD-specific Claiming Instructions, since 1996, have stated that "Source documents required to be maintained by the [reimbursement] claimant may include, but are not limited to, employee time cards and/or cost allocation reports." (The Commission, in like fashion to what it did with the SDC Program, incorporated the CSDR into its P & G's for the EPEPD Program, effective June 2, 2003.)

These pre-June 2, 2003 P & G's for the EPEPD Program parallel the pre-May 27, 2004 P & G's for the SDC Program, but even less resemble the Controller's CSDR than did those SDC P & G's. For the reasons set forth above involving the SDC Program, then, we conclude that the Controller's CSDR is an underground, unenforceable regulation as applied to the audits of the School Districts' EPEPD Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003. (See fn. 2, *ante*.) These audits are invalidated to the extent they used this CSDR.

The Intradistrict Attendance Program, in 1995, was found to be a reimbursable state-mandated program. This program establishes a policy of open enrollment within a school district for district residents. (Former Ed.Code, § 35160.5.)

Since 1995, the Commission's P & G's for the Intradistrict Attendance Program have required school districts seeking state-mandated reimbursement for employee salary and benefit costs: (1) to "[i]dentify

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the employee(s) and their job classification ... and specify the actual number of hours devoted to each [mandated] function.... The average number of hours devoted to each function may be claimed if supported by a documented time study”; and (2) “[f]or auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.” For the 1998 to 2003 period of fiscal years at issue, the Controller's Intradistrict Attendance Program-specific Claiming Instructions substantively mirrored P & G's No. (1) above (except for the “average number of hours” provision), and stated as to source documents: “Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on this mandate.” (In early 2010, the Commission incorporated the Controller's CSDR into the Intradistrict Attendance Program P & G's; see fn. 5, *post.*)

***807** Applying the same reasoning we have applied above with respect to the SDC and the EPEPD Programs, we conclude that the Controller's CSDR is an underground, unenforceable regulation as applied to the audits of the School Districts' Intradistrict Attendance Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003. (See fn. 2, *ante.*) These audits are invalidated to the extent they used this CSDR.

That leaves the Collective Bargaining Program, which was found to be a reimbursable state-mandated program in 1978 (by the Commission's predecessor, the State Board of Control). This program requires school district employers to collectively bargain with represented employees, and to publicly disclose the major provisions of their agreements prior to final adoption. ([§ 3540 et seq.](#))

If the Commission's pre-May 27, 2004 P & G's for the SDC Program most closely resemble the Controller's CSDR, the P & G's for the Collective Bargaining Program bear the least resemblance. As pertinent, the Collective Bargaining Program P & G's require school districts seeking reimbursement**44 for employee salary and benefit costs to simply “[s]upply workload data requested ... to support the level of costs claimed” and “[s]how the classification of the employees involved, amount of time spent, and their hourly rate”; nothing is said about “source documents.” The Controller's Collective Bargaining Program-specific

Claiming Instructions substantively mirror those of the Intradistrict Attendance Program, stating that source documents include employee time records that show the employee's actual time spent on the mandated function. (And as with the Intradistrict Attendance Program, the Commission, in early 2010, incorporated the Controller's CSDR into the Collective Bargaining Program P & G's; see fn. 5, *post.*)

Consequently, employing the same reasoning we have employed above, we conclude that the Controller's CSDR is an underground, unenforceable regulation as applied to the audits of the School Districts' Collective Bargaining Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003. (See fn. 2, *ante.*) These audits are invalidated to the extent they used this CSDR.

IV. Declaratory and Related Writ of Mandate Relief

The trial court declared that the Controller's CSDR, as applied to the audits of the Intradistrict Attendance and Collective Bargaining Programs for the 1998 to 2003 period of fiscal years, was an invalid and void underground regulation under the APA. Correspondingly, the trial court issued a peremptory writ of mandate (traditional mandamus) invalidating these CSDR-based audits to the extent they were not final audit determinations for more than ***808** three years before the School Districts filed their respective lawsuits on May 23, 2006 (Clovis et al.) and March 2, 2007 (San Juan). This three-year period is the applicable three-year statute of limitations under [Code of Civil Procedure section 338](#), subdivision (a), for enforcing a statutory liability like state-mandated reimbursement. We are affirming this part of the trial court's judgment.

However, the trial court refused to provide, in parallel fashion, declaratory and writ of mandate relief for the CSDR-based audits involving the SDC and EPEPD Programs. The School Districts contend the trial court erred in this respect. We agree.

In refusing to provide this relief, the trial court reasoned that, since the Commission had incorporated the Controller's CSDR into the Commission's regulatory P & G's for the SDC and EPEPD Programs, there was no longer an actual and ongoing controversy upon which to grant declaratory and related mandate relief con-

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cerning the CSDR's invalidity as an underground regulation in this context; and the Commission could administratively determine, pursuant to the Incorrect Reduction Claim process, the past audits that had used the CSDR before its incorporation into the SDC and EPEPD P & G's. This is where we part company with the trial court.

Our departure is based on [section 11350](#) of the APA and the legal principles set forth in [Californians for Native Salmon etc. Assn. v. Department of Forestry \(1990\) 221 Cal.App.3d 1419, 271 Cal.Rptr. 270 \(Native Salmon\)](#) and its progeny.

[Section 11350](#) of the APA specifies that “[a]ny interested person may obtain a judicial declaration as to the validity of any regulation ... by bringing an action for declaratory relief....” ([§ 11350](#), subd. (a).)

In [Native Salmon](#), the plaintiffs sought declaratory relief against the state forestry department, alleging that it was department policy, with respect to timber harvest plans: (1) to delay responses to public comments, and (2) to not evaluate the cumulative**45 impact of logging activities in the plans. The [Native Salmon](#) court concluded that declaratory relief was appropriate in this context, stating: “[Plaintiffs] ... challenge not a specific [administrative] order or decision [which is generally subject to review only pursuant to a writ of *administrative* mandate, rather than traditional mandate], or even a series thereof, but an overarching, quasi-legislative policy set by an administrative agency. Such a policy is subject to review in an action for declaratory relief.... [¶] ... [R]eview of specific, discretionary administrative decisions [must not be confused] with review of a generalized agency policy. Declaratory relief directed to *policies* of administrative agencies is not an unwarranted control of discretionary, specific agency decisions.” *809([Native Salmon, supra](#), 221 Cal.App.3d at p. 1429, 271 Cal.Rptr. 270; accord, [Venice Town Council, Inc. v. City of Los Angeles \(1996\) 47 Cal.App.4th 1547, 1566, 55 Cal.Rptr.2d 465](#); see also [Simi Valley Adventist Hospital v. Bontá \(2000\) 81 Cal.App.4th 346, 354-355, 96 Cal.Rptr.2d 633.](#))

[9][10][11] Similarly, here, the School Districts have challenged “an overarching, quasi-legislative policy set by an administrative agency” ([Native Salmon, supra](#), 221 Cal.App.3d at p. 1429, 271 Cal.Rptr. 270)

rather than a specific, discretionary administrative decision: i.e., the Controller's policy of using the (underground) CSDR to conduct audits in the SDC and EPEPD Programs for the period straddling the fiscal years 1998 to 2003. Declaratory and accompanying traditional mandate relief is appropriate in this context; this is an ongoing controversy limited by the three-year statute of limitations noted above.^{FN5}

[FN5](#). The Controller had requested that, at a minimum, we stay this appeal in light of the Commission's pending decision to incorporate the Controller's CSDR into the Commission's P & G's for the Intradistrict Attendance and Collective Bargaining Programs, as the Commission has done for the SDC and EPEPD Programs. In a subsequent request for judicial notice, the Controller has now noted that the Commission, on January 29, 2010, amended its P & G's for the Intradistrict Attendance and Collective Bargaining Programs to adopt the CSDR for each program. We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission's *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's.

Also, we deny the School Districts' request for judicial notice of the Commission's Incorrect Reduction Claim caseload summary and the Controller's list of final audit reports for California school districts and community college districts.

And there is no adequate administrative remedy. The trial court made a finding-supported by substantial evidence-that the Commission “consistently refuses to rule on underground regulation claims on the basis of an opinion that it lacks jurisdiction to decide such claims.” (The trial court made this finding in discussing the Intradistrict Attendance and Collective Bargaining Programs, but the finding applies equally to the SDC and EPEPD Programs.)

We conclude that declaratory and accompanying tra-

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ditional mandate relief applies not only to the Intradistrict Attendance and Collective Bargaining Programs, but also to the SDC and EPEPD Programs for the fiscal years at issue. ^{FN6}

^{FN6}. In light of our resolution, we need not consider the School Districts' alternative claim that the Controller's CSDR constitutes an unlawful retroactive rule, or the School Districts' additional claim that regardless whether an actual controversy exists for purposes of declaratory relief, the requested writ relief is not moot.

***810 V. Health Fee Elimination Program**

[12] In 1986, and again in 1989 (after statutory amendment), the Commission determined**46 that the Health Fee Elimination Program imposed a reimbursable state-mandated cost on those community college districts that provide health services, by requiring those districts to maintain in the future the level of service they had provided in the 1986-1987 fiscal year (termed, the "maintenance of effort" requirement); this "maintenance of effort" had to take place even if the districts, as they were and are permitted to do under the relevant statute, eliminated their nominal statutory student health fee (\$7.50 per semester maximum (former [Ed.Code, § 72246](#), Stats.1984, 2d Ex.Sess., ch. 1, p. 6642)); \$10 per semester maximum (current [Ed.Code, § 76355](#), subd. (a)(1)).^{FN7}

^{FN7}. As [Education Code section 76355](#), subdivision (a)(1) states: "The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both." (An inflationary adjustment is provided for in subdivision (a)(2) of this section.)

The College Districts contend that the Controller's Claiming Instruction for the Health Fee Elimination Program is an underground regulation under the APA

and beyond the Controller's authority. Specifically, the College Districts argue that the Controller's Health Fee Rule misapplies the Commission's Health Fee Elimination Program P & G's by automatically reducing reimbursement claims by the amount that districts are statutorily authorized to charge students for health fees, even when a district chooses not to charge its students those fees.

Since 1989, the Commission's Health Fee Elimination Program P & G's have stated in pertinent part:

"Any offsetting savings the claimant experiences as a direct result of this statute [i.e., the health fee statutes-formerly [Ed.Code, § 72246](#); now [Ed.Code, § 76355](#)] must be deducted from the [reimbursement] costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by [Education Code section 72246](#)[, subdivision] (a). This shall also include payments (fees) received from individuals other than students who are not covered by [Education Code Section 72246](#) for health services."

***811** The Controller's Health Fee Rule (i.e., its Health Fee Elimination Program-specific Claiming Instruction) states in pertinent part:

"Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the [Education Code \[section\] 76355](#)."

The College Districts maintain that the Controller's Health Fee Rule constitutes an invalid, underground regulation-i.e., one not adopted pursuant to the APA-because it meets the two-part test of a "regulation": (1) the Controller generally applies it; and (2) the rule implements, interprets or makes specific the Commission's Health Fee Elimination Program P & G's. ****47**([Morning Star, supra, 38 Cal.4th at pp. 333-334, 42 Cal.Rptr.3d 47, 132 P.3d 249.](#))

There is no quibble with part (1)-general application. The real issue is with part (2) of the test-defining a "regulation" as implementing, interpreting, or making

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specific the Health Fee Elimination Program P & G's. The College Districts argue that those P & G's require that the mandate claimant have actually "experience[d]" or "received" an amount of health service money for that amount to be deducted from the reimbursement claim. That is, if a college district does not charge its students a health service fee, as the district is statutorily permitted to do, then the district has not "experienced" or "received" that fee, and that amount cannot be deducted. The College Districts note that the Health Fee Rule, by contrast, states flatly that "reimbursement will be reduced by the amount of student health fees authorized per the [Education Code \[section\] 76355](#)."

The College Districts' argument carries some weight, especially when viewed solely within the prism of comparing the Health Fee Elimination Program P & G's to the Health Fee Rule semantically. But the argument falters when exposed to the broader context of the nature of state-mandated costs and common sense.

As for the nature of state-mandated costs, [section 17514](#) defines "costs mandated by the state" to mean "any *increased costs* which a local agency or school district is *required to incur* after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." (Italics added.) And [section 17556](#) reflects this definition by stating that costs are not deemed mandated by the state to the extent the "local agency or school district *has the authority* to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." ([§ 17556](#), subd. (d), italics added.)

[13] *812 The College Districts point out, though, in a series of overlapping arguments, that [sections 17514](#) and [17556](#) govern the *Commission's* determination of whether a program is a state-mandated program, not the *Controller's* determination as to audit reductions; and the Commission has already found the Health Fee Elimination Program to be a state-mandated program. This observation, however, does not diminish the basic principle underlying the state mandate process that [sections 17514](#) and [17566](#), subdivision (d) embody: To the extent a local agency or school district

"has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.^{FN8} (SEE [COnnell v. superiOr court \(1997\) 59 cal.app.4th 382, 401, 69 Cal.Rptr.2d 231](#) ["the plain language of [\[section 17556](#), subdivision (d)] precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program"]; see [Connell, at pp. 397-398, 69 Cal.Rptr.2d 231](#).)

FN8. In light of [sections 17514](#) and [17556](#), subdivision (d), the Commission found the Health Fee Elimination Program to be a reimbursable state-mandated program to the extent the cost to community college districts of maintaining their level of health services at the 1986-1987 level, as required by the Health Fee Elimination Program mandate, is not covered by the nominal health fee authorized by [section 76355](#), subdivision (a)(1) (\$10 maximum per semester per student).

And this basic principle flows from common sense as well. As the Controller succinctly**48 puts it, "Claimants can choose not to require these fees, but not at the state's expense."

[14] The College Districts also argue that the Controller lacks the authority to rely on these Government Code sections to uphold its Health Fee Rule. The argument is that, since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission's P & G's. To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude the Health Fee Rule is valid.

DISPOSITION

We direct the trial court to issue a peremptory writ of mandate that invalidates the Controller's audits of the School Districts' SDC and EPEPD Program reimbursement claims for the applicable periods identified in footnote 2, *ante*, encompassing the fiscal years 1998 to 2003, to the extent those audits were based on the CSDR and did not become final audit determinations prior to the applicable three-year statute of limitations. If it chooses to do so, the Controller may re-audit the relevant reimbursement claims based on the docu-

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mentation requirements of the P & G's and claiming
*813 instructions when the mandate costs were in-
curred (i.e., not using the CSDR). In all other respects,
the judgment is affirmed.

The parties shall each bear their own costs on appeal.
([Cal. Rules of Court, rule 8.278\(a\)\(3\).](#))

We concur: [SCOTLAND](#), P.J., and [NICHOLSON](#), J.
Cal.App. 3 Dist.,2010.
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1 Cal.5th 749
Supreme Court of California

DEPARTMENT OF FINANCE et al., Plaintiffs and
Respondents,

v.

COMMISSION ON STATE MANDATES,
Defendant and Respondent;

County of Los Angeles et al., Real Parties in
Interest and Appellants.

S214855

Filed 8/29/2016

As Modified on Denial of Rehearing 11/16/2016

Synopsis

Background: Department of Finance, State Water Resources Control Board, and regional water quality control board filed petition for writ of administrative mandamus seeking to overturn decision of Commission on State Mandates that regional board's conditions on permit authorizing local agencies to operate storm drain systems constituted state mandates subject to reimbursement. The Superior Court, Los Angeles County, No. BS130730, [Ann I. Jones, J.](#), granted petition. Local agencies appealed. The Court of Appeal, [Johnson, J.](#), affirmed. Local agencies petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, [Corrigan, J.](#), held that:

^[1] permit itself did not indicate that permit conditions were federal mandates not subject to reimbursement;

^[2] Commission was not required to defer to regional board's conclusion that challenged conditions were federally mandated;

^[3] condition requiring local agencies to conduct inspections of certain facilities and construction sites was not a federal mandate; and

^[4] condition requiring local agencies to install and maintain trash receptacles was not a federal mandate.

Reversed and remanded.

Opinion, [163 Cal.Rptr.3d 439](#), superseded.

[Cuéllar, J.](#), filed separate concurring and dissenting opinion with which [Liu](#) and [Kruger, JJ.](#), concurred.

West Headnotes (14)

^[1] **Environmental Law**

🔑 Purpose

Federal Clean Water Act (CWA) is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation's water. Federal Water Pollution Control Act § 101, [33 U.S.C.A. § 1251 et seq.](#)

[Cases that cite this headnote](#)

^[2] **Environmental Law**

🔑 Discharge of pollutants

State permitting system for issuing permits for pollutant discharge from storm sewer system regulates discharges under both state and federal law. Federal Water Pollution Control Act § 101, [33 U.S.C.A. § 1251 et seq.](#); [Cal. Water Code §§ 13370\(c\), 13372\(a\), 13374, 13377.](#)

[Cases that cite this headnote](#)

^[3] **Administrative Law and Procedure**

🔑 Scope

Ordinarily, when scope of review in trial court is whether administrative decision is supported by substantial evidence, the scope of review on appeal is the same; however, appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions.

Cases that cite this headnote

^{14]} **Trial**

🔑 Construction of writings

Question whether statute or executive order imposes a mandate is a question of law.

Cases that cite this headnote

^{15]} **Municipal Corporations**

🔑 Power and Duty to Tax in General

States

🔑 Limitation of amount of indebtedness or expenditure

Taxation

🔑 Power of legislature in general

Constitutional provision restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and provision imposing direct constitutional limit on state and local power to adopt and levy taxes work in tandem, together restricting state and local governments' power both to levy and to spend for public purposes. Cal. Const. arts. 13A, 13B.

Cases that cite this headnote

^{16]} **Municipal Corporations**

🔑 Power and Duty to Tax in General

States

🔑 Limitation of amount of indebtedness or expenditure

States

🔑 Limitation of use of funds or credit

Taxation

🔑 Power of legislature in general

Reimbursement provision in constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local

government is entitled to reimbursement from state for associated costs, was included in recognition of the fact that provision restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and provision imposing direct constitutional limit on state and local power to adopt and levy taxes severely restrict taxing and spending powers of local governments. Cal. Const. arts. 13A, 13B, § 6(a).

Cases that cite this headnote

^{17]} **Municipal Corporations**

🔑 Power and Duty to Tax in General

States

🔑 Limitation of amount of indebtedness or expenditure

States

🔑 Limitation of use of funds or credit

Taxation

🔑 Power of legislature in general

Purpose of constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government is entitled to reimbursement from state for associated costs is to prevent 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 imposed by constitutional articles restricting amounts state and local governments may appropriate and spend each year from proceeds of taxes and imposing direct constitutional limit on state and local power to adopt and levy taxes. Cal. Const. arts. 13A, 13B, § 6(a).

Cases that cite this headnote

^{18]} **Environmental Law**

🔑 Conditions and limitations

Permit issued by regional water quality board

authorizing local agencies to operate storm drain systems, which contained conditions designed to maintain quality of state water and to comply with federal Clean Water Act, did not itself demonstrate what conditions would have been imposed had federal Environmental Protection Agency (EPA) granted permit, and thus permit itself did not indicate that conditions were federal mandates not subject to reimbursement under constitutional provision requiring state to reimburse local agency for costs associated with new program or higher level of service mandated by legislature or state agency; in issuing permit, regional board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13370(c), 13372(a), 13374, 13377; Cal. Gov't Code §§ 17514, 17556(c).

Cases that cite this headnote

[9]

Environmental Law

🔑 Conditions and limitations

Commission on State Mandates was not required to defer to regional water quality control board's conclusion that challenged conditions contained in permits issued by regional board authorizing local agencies to operate storm drain systems were federally mandated, and thus qualified for exception to constitutional provision requiring state to reimburse local agency for costs associated with new program or higher level of service mandated by legislature or state agency; state had burden to show challenged conditions were mandated by federal law, requiring Commission to defer to regional board would have failed to honor legislature's intent in creating Commission, and policies supporting constitutional provision would have been undermined if Commission were required to defer to regional board on federal mandate question. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001,

13370(c); Cal. Gov't Code §§ 17514, 17556(c).

Cases that cite this headnote

[10]

Environmental Law

🔑 Water pollution

In trial court action challenging regional water quality control board's authority to impose specific permit conditions for discharging pollutants from storm sewer system, board's findings regarding what conditions satisfied federal standard are entitled to deference. Federal Water Pollution Control Act §§ 402, 402, 33 U.S.C.A. §§ 1342(a)(1), 1342(a)(2); 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Water Code §§ 13001, 13263(a), 13370(c).

Cases that cite this headnote

[11]

Environmental Law

🔑 Water pollution

In trial court action challenging regional water quality control board's authority to impose specific permit conditions for discharging pollutants from storm sewer system, party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19); Cal. Water Code §§ 13001, 13263(a), 13370(c).

Cases that cite this headnote

[12]

States

🔑 State expenses and charges and statutory liabilities

Typically, the party claiming the applicability of exception to constitutional provision providing that, if legislature or state agency required local government to provide new program or higher

level of service, local government is entitled to reimbursement from state for associated costs, bears the burden of demonstrating that exception applies. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c).

[Cases that cite this headnote](#)

[13]

Environmental Law

🔑 Conditions and limitations

Condition contained in permit issued by regional water quality board authorizing local agencies to operate storm drain systems, which required local agencies to conduct inspections of certain commercial and industrial facilities and construction sites, was not a federal mandate, but rather was a state mandate subject to reimbursement under constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government was entitled to reimbursement from state for associated costs; neither federal Clean Water Act (CWA) nor Environmental Protection Agency (EPA) regulations required local agencies to inspect facilities or construction sites, state and federal law required regional board to conduct inspections, and regional board exercised its discretion and shifted obligation to conduct inspections to local agencies. Federal Water Pollution Control Act §§ 402, 402, 33 U.S.C.A. §§ 1342(p)(3)(A), 1342(p)(3)(B)(iii); 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(14)(x), 122.26(b)(19), 122.26(d)(2)(iv)(B)(1), 122.26(d)(2)(iv)(C)(1), 122.26(d)(2)(iv)(D)(3); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13260, 13263, 13267(c), 13370(c); Cal. Gov't Code §§ 17514, 17556(c).

[Cases that cite this headnote](#)

[14]

Environmental Law

🔑 Conditions and limitations

Condition contained in permit issued by regional water quality board authorizing local agencies to

operate storm drain systems, which required local agencies to install and maintain trash receptacles at transit stops, was not a federal mandate, but rather was a state mandate subject to reimbursement under constitutional provision providing that, if legislature or state agency required local government to provide new program or higher level of service, local government was entitled to reimbursement from state for associated costs; while local agencies were required to include a description of practices for operating and maintaining roadways and procedures for reducing impact of discharges from storm sewers in their permit application under federal Clean Water Act (CWA) and Environmental Protection Agency (EPA) regulation, issuing agency had discretion whether to make those practices conditions of the permit, and EPA had issued permits in other cities that did not include trash receptacle condition. Federal Water Pollution Control Act § 101, 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(b)(8), 122.26(b)(19), 122.26(d)(2)(iv)(A)(3); Cal. Const. art. XIII B, § 6(a); Cal. Water Code §§ 13001, 13370(c); Cal. Gov't Code §§ 17514, 17556(c).

See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 119.

[Cases that cite this headnote](#)

****48** Ct.App. 2/1 B237153, Los Angeles County Super. Ct. No. BS130730

Attorneys and Law Firms

Burhenn & Gest, [Howard Gest](#) and [David W. Burhenn](#), Los Angeles, for Real Parties in Interest and Appellants County of Los Angeles, City of Bellflower, City of Carson, City of Commerce, City of Covina, City of Downey and City of Signal Hill.

[John F. Krattli](#) and [Mark Saladino](#), County Counsel, and [Judith A. Fries](#), Principal Deputy County Counsel for Real Party in Interest and Appellant County of Los Angeles

[Meyers, Nave, Riback, Silver & Wilson](#), [Gregory J. Newmark](#), Los Angeles, [John D. Bakker](#), Oakland; [Morrison & Foerster](#), [Robert L. Falk](#) and [Megan B.](#)

[Jennings](#), San Francisco, for Alameda Countywide Clean Water Program, City/County Association of Governments of San Mateo County and Santa Clara Valley Urban Runoff Pollution Prevention Program as Amici Curiae **49 on behalf of Real Parties in Interest and Appellants.

Somach Simmons & Dunn, [Theresa A. Dunham](#), [Nicholas A. Jacobs](#), Sacramento; [Pamela J. Walls](#) and [Gregory P. Priamos](#), County Counsel (Riverside), [Karin Watts-Bazan](#), Principal Deputy County Counsel, and [Aaron C. Gettis](#), Deputy County Counsel, for California Stormwater Quality Association, Riverside County Flood Control and Water Conservation District and County of Riverside as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Nicholas S. Chrisos](#), County Counsel (Orange), [Ryan M.F. Baron](#) and [Ronald T. Magsaysay](#), Deputy County Counsel, for County of Orange as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Best Best & Krieger, [Shawn Hagerty](#) and [Rebecca Andrews](#), San Diego, for County of San Diego and 18 Cities in San Diego County as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Thomas E. Montgomery](#), County Counsel (San Diego) and [Timothy M. Barry](#), Chief Deputy County Counsel, for California State Association of Counties and League of California Cities as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Andrew R. Henderson](#) for Building Industry Legal Defense Foundation as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Best Best & Krieger and J.G. Andre Monette for City of Aliso Viejo, City of Lake Forest and City of Santa Ana as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Michael R.W. Houston](#), City Attorney (Anaheim) for City of Anaheim as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Richards, Watson & Gershon](#) and [Candice K. Lee](#), Los Angeles, for City of Brea, City of Buena Park and City of Seal Beach as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Baron J. Bettenhausen](#), Irvine, for City of Costa Mesa and City of Westminster as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Aleshire & Wynder](#), [Anthony R. Taylor](#), Irvine, and [Wesley A. Miliband](#), Sacramento, for City of Cypress as

Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Rutan & Tucker](#) and [Richard Montevideo](#), Costa Mesa, for City of Dana Point as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Jennifer McGrath](#), City Attorney (Huntington Beach) and [Michael Vigliotta](#), Chief Assistant City Attorney, for City of Huntington Beach as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Rutan & Tucker](#) and [Jeremy N. Jungreis](#), Costa Mesa, for City of Irvine, City of San Clemente and City of Yorba Linda as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Woodruff, Spradlin & Smart](#) and [M. Lois Bobak](#), Costa Mesa, for City of Laguna Hills and City of Tustin as Amici Curiae on behalf of Real Parties in Interest and Appellants.

[Terry E. Dixon](#), Fountain Valley, for City of Laguna Niguel as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Mark K. Kitabayashi](#), Los Angeles, for City of Mission Viejo as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Aaron C. Harp](#), Canyon Lake, for City of Newport Beach as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Wayne W. Winthers](#) for City of Orange as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Kamala D. Harris](#), Attorney General, [Douglas J. Woods](#), Assistant Attorney General, [Peter K. Southworth](#), [Kathleen A. Lynch](#), [Tamar Pachter](#) and [Nelson R. Richards](#), Deputy Attorneys General, for Plaintiffs and Respondents.

No appearance for Defendant and Respondent.

Opinion

[Corrigan, J.](#)

***360 *754** Under our state Constitution, if the Legislature or a state agency requires a local government to provide a new program or higher level of service, the local government is entitled to reimbursement from the state for the associated costs. (*Cal. Const., art. XIII B, § 6, subd. (a).*) There are exceptions, however. Under one of them, if the new program or increased service is mandated by a federal law or regulation, reimbursement is not required.

(Gov. Code, § 17556, subd. (c).)

The services in question here are provided by local agencies that operate storm drain systems pursuant to a state-issued permit. Conditions in that permit are designed to maintain the quality of California’s water, and to comply with the federal Clean Water Act. The Court of Appeal held that certain permit conditions were federally mandated, and thus not reimbursable. We reverse, concluding that no federal law or regulation imposed the conditions nor did the federal regulatory system require the state to impose them. Instead, the permit conditions were imposed as a result of the state’s discretionary action.

*361 I. BACKGROUND

The Regional Water Quality Control Board, Los Angeles Region (the Regional Board) is a state agency. It issued a permit authorizing Los Angeles County, the Los Angeles County Flood Control District, and 84 cities (collectively, the Operators) to operate storm drainage systems.¹ **50 Permit *755 conditions required that the Operators take various steps to reduce the discharge of waste and pollutants into state waters. The conditions included installing and maintaining trash receptacles at transit stops, as well as inspecting certain commercial and industrial facilities and construction sites.

Some Operators sought reimbursement for the cost of satisfying the conditions. The Commission on State Mandates (the Commission) concluded each required condition was a new program or higher level of service, mandated by the state rather than by federal law. However, it found the Operators were only entitled to state reimbursement for the costs of the trash receptacle condition, because they could levy fees to cover the costs of the required inspections. (See discussion, *post*, at p. 12.) The trial court and the Court of Appeal disagreed, finding that all of the requirements were federally mandated.

We granted review. To resolve this issue, it is necessary to consider both the permitting system and the reimbursement obligation in some detail.

A. The Permitting System

The Operators’ municipal storm sewer systems discharge both waste and pollutants.² State law controls “waste” discharges. (Wat. Code, § 13265.) Federal law regulates discharges of “pollutant[s].” (33 U.S.C. § 1311(a).) Both state and later-enacted federal law require a permit to

operate such systems.

California’s Porter–Cologne Water Quality Control Act (Porter–Cologne Act or the Act; Wat. Code, § 13000 et seq.) was enacted in 1969. It established the State Water Resources Control Board (State Board), along with nine regional water quality control boards, and gave those agencies “primary responsibility for the coordination and control of water quality.” (Wat. Code, § 13001; see *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*City of Burbank*).) The State Board establishes statewide policy. The regional boards formulate and *756 adopt water quality control plans and issue permits governing the discharge of waste. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128 (*Building Industry*).)

The Porter–Cologne Act requires any person discharging, or proposing to discharge, waste that could affect the quality of state waters to file a report with the appropriate regional board. (**51 Wat. Code, § 13260, subd. (a)(1).) The regional board then “shall prescribe requirements as to the nature” of the discharge, implementing any applicable water quality control plans. (Wat. Code, § 13263, subd. (a).) The Operators must follow *362 all requirements set by the Regional Board. (Wat. Code, §§ 13264, 13265.)

¹The federal Clean Water Act (the CWA; 33 U.S.C. § 1251 et seq.) was enacted in 1972, and also established a permitting system. The CWA is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. (*City of Burbank, supra*, 35 Cal.4th at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The CWA prohibits pollutant discharges unless they comply with: (1) a permit (see 33 U.S.C. §§ 1328, 1342, 1344); (2) established effluent limitations or standards (see 33 U.S.C. §§ 1312, 1317); or (3) established national standards of performance (see 33 U.S.C. § 1316). (33 U.S.C. § 1311(a).) The CWA allows any state to adopt and enforce its own water quality standards and limitations, so long as those standards and limitations are not “less stringent” than those in effect under the CWA. (33 U.S.C. § 1370.)

The CWA created the National Pollutant Discharge Elimination System (NPDES), authorizing the Environmental Protection Agency (EPA) to issue a permit for any pollutant discharge that will satisfy all requirements established by the CWA or the EPA Administrator. (33 U.S.C. § 1342(a)(1), (a)(2).) The federal system notwithstanding, a state may administer its own permitting system if authorized by the EPA.³ If the EPA concludes a

state has adequate authority to administer its proposed program, it must grant approval (33 U.S.C. § 1342(b)) and suspend its own issuance of permits (33 U.S.C. § 1342(c)(1)).⁴

^[2] *757 California was the first state authorized to issue its own pollutant discharge permits. (*People of St. of Cal., etc. v. Environmental Pro. Agcy.* (9th Cir. 1975) 511 F.2d 963, 970, fn. 11, revd. on other grounds in *Environmental Protection Agency v. California* (1976) 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578.) Shortly after the CWA’s enactment, the Legislature amended the Porter–Cologne Act, adding chapter 5.5 (*Wat. Code, § 13370 et seq.*) to authorize state issuance of permits (*Wat. Code, § 13370, subd. (c)*). The Legislature explained the amendment was “in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to [the Porter–Cologne Act].” (*Ibid.*) The Legislature provided that Chapter 5.5 be “construed to ensure consistency” with the CWA. (*Wat. Code, § 13372, subd. (a)*.) It directed that state and regional boards issue waste discharge requirements “ensur[ing] compliance with all applicable provisions of the [CWA] ... together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” **52 (*Wat. Code, § 13377*, italics added.) To align the state and federal permitting systems, the legislation provided that the term “waste discharge requirements” under the Act was equivalent to the term “permits” under the CWA. (*Wat. Code, § 13374*.) Accordingly, California’s permitting system now regulates discharges under both state and federal law. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1452, 126 Cal.Rptr.2d 389; accord *Building Industry, supra*, 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128.)

In 1987, Congress amended the CWA to clarify that a permit is required for any discharge from a municipal storm sewer system serving a population of 100,000 or more. (33 U.S.C. § 1342(p)(2)(C), (D).) Under those amendments, a permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit non-storm water discharges into the storm sewers, and must “require controls to reduce the discharge of *363 pollutants to the maximum extent practicable.” (33 U.S.C. § 1342(p)(3)(B), italics added.) The phrase “maximum extent practicable” is not further defined. How that phrase is applied, and by whom, are important aspects of this case.

EPA regulations specify the information to be included in a permit application. (See 40 C.F.R. § 122.26(d)(1)(i)–(vi),

(d)(2)(i)–(viii).) Among other things, an applicant must set out a proposed management program that includes management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable. (40 C.F.R. § 122.26(d)(2)(iv).) The permit-issuing agency has discretion to determine which practices, whether or not proposed by the applicant, will be imposed as conditions. (*Ibid.*)

*758 B. The Permit in Question

In 2001, Los Angeles County (the County), acting for all Operators, applied for a permit from the Regional Board. The board issued a permit (the Permit), with conditions intended to “reduce the discharge of pollutants in storm water to the Maximum Extent Practicable” in the Operators’ jurisdiction. The Permit stated that its conditions implemented both the Porter–Cologne Act and the CWA.

Part 4 of the Permit contains the four requirements at issue. Part 4(C) addresses commercial and industrial facilities, and required the Operators to inspect certain facilities twice during the five-year term of the Permit. Inspection requirements were set out in substantial detail.⁵ Part 4(E) of the Permit addresses construction sites. It required each Operator to “implement a program to control runoff from construction activity at all construction sites within its jurisdiction,” and to inspect each construction **53 site of one acre or greater at least “once during the wet season.”⁶ Finally, Part 4(F) of the Permit addresses pollution from public agency activities. Among other things, it directed each Operator not otherwise regulated to “[p]lace trash receptacles at all transit stops within its jurisdiction,” and to maintain them as necessary.

C. Local Agency Claims

1. Applicable procedures for seeking reimbursement

As mentioned, when the Legislature or a state agency requires a local government to provide a new program or higher level of service, the state must “reimburse that local government for the costs of the program or increased level of service.” (*Cal. Const., art. XIII B, § 6*, subd. (a) (hereafter, *759 section 6).)⁷ However, reimbursement is not required if “[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that

exceed the mandate in that federal law or regulation.” (Gov. Code, § 17556, subd. (c).)

***364** The Legislature has enacted comprehensive procedures for the resolution of reimbursement claims (Gov. Code, § 17500 et seq.) and created the Commission to adjudicate them. (Gov. Code, §§ 17525, 17551.) It also established “a test-claim procedure to expeditiously resolve disputes affecting multiple agencies.” (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 285 Cal.Rptr. 66, 814 P.2d 1308 (*Kinlaw*).)

The first reimbursement claim filed with the Commission is called a test claim. (Gov. Code, § 17521.) The Commission must hold a public hearing, at which the Department of Finance (the Department), the claimant, and any other affected department or agency may present evidence. (Gov. Code, §§ 17551, 17553.) The Commission then determines “whether a state mandate exists and, if so, the amount to be reimbursed.” (*Kinlaw, supra*, 54 Cal.3d at p. 332, 285 Cal.Rptr. 66, 814 P.2d 1308.) The Commission’s decision is reviewable by writ of mandate. (Gov. Code, § 17559.)

2. The test claims

The County and other Operators filed test claims with the Commission, seeking reimbursement for the Permit’s inspection and trash receptacle requirements. The Department, State Board, and Regional Board (collectively, the State) responded that the Operators were not entitled to reimbursement because each requirement was federally mandated.

The Department argued that the EPA had delegated its federal permitting authority to the Regional Board, which acted as an administrator for the EPA, ensuring the state’s program complied with the CWA. The Department acknowledged the Regional Board had discretion to set detailed permit conditions, but urged that the challenged conditions were required for the Permit to comply with federal law.

****54** The State and Regional Boards argued somewhat differently. They contended the CWA required the Regional Board to impose specific permit ***760** controls to reduce the discharge of pollutants to the “maximum extent practicable.” Thus, when the Regional Board determined the Permit’s conditions, those conditions were part of the federal mandate. The State and Regional Boards also argued that the challenged conditions were “animated” by EPA regulations. In support of the trash receptacle

requirement, they relied on 40 Code of Federal Regulations part 122.26(d)(2)(iv)(A)(3).⁸ In support of the inspection requirements, they relied on 40 Code of Federal Regulations part 122.26(d)(2)(iv)(B)(1),⁹ (C)(1),¹⁰ and (D)(3).¹¹

***365** The Operators argued the conditions were not mandated by federal law, because nothing in the CWA or in the cited federal regulations required them to install trash receptacles or perform the required site inspections. They also submitted evidence showing that none of the challenged requirements were ***761** contained in their previous permits issued by the Regional Board, nor were they imposed on other municipal storm sewer systems by the EPA.

As to the inspection requirements, the Operators argued that state law required ****55** the *state and regional boards* to regulate discharges of waste. This regulatory authority included the power to inspect facilities and sites. The Regional Board had used the Permit conditions to shift those inspection responsibilities to them. They also presented evidence that the Regional Board was required to inspect industrial facilities and construction sites for compliance with statewide permits issued by the State Board (see *ante*, 207 Cal.Rptr.3d at pp. 52, 53, fns. 5, 6, 378 P.3d at p. 363, fns. 5, 6). They urged that the Regional Board had shifted that obligation to the Operators as well. Finally, the Operators submitted a declaration from a county employee indicating the Regional Board had offered to pay the County to inspect industrial facilities *on behalf of* the Regional Board, but revoked that offer after including the inspection requirement in the Permit.

The EPA submitted comments to the Commission indicating that the challenged permit requirements were designed to reduce the discharge of pollutants to the “maximum extent practicable.” Thus, the EPA urged the requirements fell “within the scope” of federal regulations and other EPA guidance regarding storm water management programs. The Bay Area Stormwater Management Agencies Association, the League of California Cities, and the California State Association of Counties submitted comments urging that the challenged requirements were state, rather than federal, mandates.

3. The commission’s decision

By a four-to-two vote, the Commission partially approved the test claims, concluding none of the challenged requirements were mandated by federal law. However, the Commission determined the Operators were not entitled to

reimbursement for the inspection requirements because they had authority to levy fees to pay for the required inspections. Under [Government Code section 17556, subdivision \(d\)](#), the constitutional reimbursement requirement does not apply if the local government has the authority to levy fees or assessments sufficient to pay for the mandated program or service.

4. *Petitions for writ of mandate*

The State challenged the Commission’s determination that the requirements were state mandates. By cross-petition, the County and certain cities challenged the Commission’s finding that they could impose fees to pay for the inspections.

The trial court concluded that, because each requirement fell “within the maximum extent practicable standard,” they were federal mandates not ***762** subject to reimbursement. It granted the State’s petition and ordered the Commission to issue a new statement of decision. The court did not reach the cross-claims relating to fee authority. Certain Operators appealed.¹² The Court of Appeal affirmed, concluding as a matter of law that the trash receptacle and inspection requirements were federal mandates.

***366 II. DISCUSSION**

A. Standard of Review

^[3] ^[4]Courts review a decision of the Commission to determine whether it is supported by substantial evidence. ([Gov. Code, § 17559](#).) Ordinarily, when the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same. (****56** [County of Los Angeles v. Commission on State Mandates](#) (1995) 32 Cal.App.4th 805, 814, 38 Cal.Rptr.2d 304 ([County of Los Angeles](#)).) However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions. ([City of San Jose v. State of California](#) (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.) The question whether a statute or executive order imposes a mandate is a question of law. (*Ibid.*) Thus, we review the entire record before the Commission, which includes references to federal and state statutes and regulations, as well as evidence of other permits and the parties’ obligations under those permits,

and independently determine whether it supports the Commission’s conclusion that the conditions here were not federal mandates. (*Ibid.*)

B. Analysis

The parties do not dispute here that each challenged requirement is a new program or higher level of service. The question here is whether the requirements were mandated by a federal law or regulation.

1. *The federal mandate exception*

^[5] Voters added article XIII B to the California Constitution in 1979. Also known as the “Gann limit,” it “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’ ” ([City of Sacramento v. State of California](#) (1990) 50 Cal.3d 51, 58–59, 266 Cal.Rptr. 139, 785 P.2d 522 ([City of Sacramento](#)).) “Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at ***763** the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.” (*Id.* at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)

^[6] ^[7]The “concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.” ([County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The reimbursement provision in section 6 was included in recognition of the fact “that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.” ([County of San Diego v. State of California](#) (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312 ([County of San Diego](#)).) The purpose of section 6 is to prevent “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” ([County of San Diego](#), at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Thus, with certain exceptions, section 6 “requires the state ‘to pay for any new governmental programs, or for higher levels of service under existing

programs, that it imposes upon local governmental agencies.’ ” (*County of San Diego*, at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

As noted, reimbursement is not required if the statute or executive order imposes “a requirement that is mandated by a federal law or regulation,” unless the state mandate imposes costs that exceed the federal mandate. (*Gov. Code*, § 17556, subd. (c).) The question here is how to apply that **57 exception when federal law requires a local agency to obtain a permit, authorizes the state to issue the permit, and provides the state discretion in determining which conditions are necessary to achieve a general standard established by federal law, and when state law allows the imposition of conditions that exceed the federal standard. Previous decisions *367 of this court and the Courts of Appeal provide guidance.

In *City of Sacramento*, supra, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, this court addressed local governments’ reimbursement claims for the costs of extending unemployment insurance protection to their employees. (*Id.*, at p. 59, 266 Cal.Rptr. 139, 785 P.2d 522.) Since 1935, the applicable federal law had provided powerful incentives for states to implement their own unemployment insurance programs. Those incentives included federal subsidies and a substantial federal tax credit for all corporations in states with certified federal programs. (*Id.* at p. 58, 266 Cal.Rptr. 139, 785 P.2d 522.) California had implemented such a program. (*Ibid.*) In 1976, Congressional legislation required *764 that unemployment insurance protection be extended to local government employees. (*Ibid.*) If a state failed to comply with that directive, it “faced [the] loss of the federal tax credit and administrative subsidy.” (*Ibid.*) The Legislature passed a law requiring local governments to participate in the state’s unemployment insurance program. (*Ibid.*)

Two local governments sought reimbursement for the costs of complying with that requirement. Opposing the claims, the state argued its action was compelled by federal law. This court agreed, reasoning that, if the state had “failed to conform its plan to new federal requirements as they arose, its businesses [would have] faced a new and serious penalty” of double taxation, which would have placed those businesses at a competitive disadvantage against businesses in states complying with federal law. (*City of Sacramento*, supra, 50 Cal.3d at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) Under those circumstances, we concluded that the “state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses.” (*Ibid.*) Because “[t]he alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards,” we

concluded “the state acted in response to a federal ‘mandate.’ ” (*Ibid.* italics added.)

County of Los Angeles, supra, 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, involved a different kind of federal compulsion. In *Gideon v. Wainwright* (1963) 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, the United States Supreme Court held that states were required by the federal Constitution to provide counsel to indigent criminal defendants. That requirement had been construed to include “the right to the use of any experts that will assist counsel in preparing a defense.” (*County of Los Angeles*, at p. 814, 38 Cal.Rptr.2d 304.) The Legislature enacted *Penal Code* section 987.9, requiring local governments to provide indigent criminal defendants with experts for the preparation of their defense. (*County of Los Angeles*, at p. 811, fn. 3, 38 Cal.Rptr.2d 304.) Los Angeles County sought reimbursement for the costs of complying with the statute. The state argued the statute’s requirements were mandated by federal law.

The state prevailed. The Court of Appeal reasoned that, even without *Penal Code* section 987.9, the county would have been “responsible for providing ancillary services” under binding Supreme Court precedent. (*County of Los Angeles*, supra, 32 Cal.App.4th at p. 815, 38 Cal.Rptr.2d 304.) *Penal Code* section 987.9 merely codified an existing federal mandate. (**58 *County of Los Angeles*, at p. 815, 38 Cal.Rptr.2d 304.)

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547 (*Hayes*) provides a contrary example. *Hayes* involved the federal Education of the Handicapped Act (EHA; 20 U.S.C. § 1401 et seq.). EHA was a “comprehensive measure designed to provide all handicapped children with basic educational opportunities.” (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547 *765) EHA required each state to adopt an implementation plan, and mandated “certain substantive and procedural requirements,” but left “primary responsibility for implementation to the state.” (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547.)

Two local governments sought reimbursement for the costs of special education assessment hearings which were required under the state’s adopted plan. The state argued the requirements imposed under its plan were federally mandated. The *Hayes* court rejected that argument. Reviewing *368 the historical development of special education law (*Hayes*, supra, 11 Cal.App.4th at pp. 1582–1592, 15 Cal.Rptr.2d 547), the court concluded that, so far as the state was concerned, the requirements established by the EHA were federally mandated. (*Hayes*, at p. 1592, 15 Cal.Rptr.2d 547.) However, that conclusion “mark[ed] the

starting point rather than the end of [its] consideration.” (*Ibid.*) The court explained that, in determining whether federal law requires a specified function, like the assessment hearings, the focus of the inquiry is whether the “manner of implementation of the federal program was left to the *true discretion* of the state.” (*Id.* at p. 1593, 15 Cal.Rptr.2d 547, italics added.) If the state “has adopted an implementing statute or regulation pursuant to the federal mandate,” and had “no ‘true choice’ ” as to the manner of implementation, the local government is not entitled to reimbursement. (*Ibid.*) If, on the other hand, “the manner of implementation of the federal program was left to the true discretion of the state,” the local government might be entitled to reimbursement. (*Ibid.*)

According to the *Hayes* court, the essential question is how the costs came to be imposed upon the agency required to bear them. “If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.” (*Hayes, supra*, 11 Cal.App.4th at p. 1594, 15 Cal.Rptr.2d 547.) Applying those principles, the court concluded that, to the extent “the state implemented the [EHA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to” reimbursement. (*Ibid.*)

From *City of Sacramento, County of Los Angeles*, and *Hayes*, we distill the following principle: If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a “true choice,” the requirement is not federally mandated.

Division of Occupational Safety & Health v. State Bd. of Control (1987) 189 Cal.App.3d 794, 234 Cal.Rptr. 661 (*Division of Occupational Safety*) is *766 instructive. The federal Occupational Safety and Health Act (Fed. OSHA; 29 U.S.C. § 651 et seq.) preempted states from regulating matters covered by Fed. OSHA unless a **59 state had adopted its own plan and gained federal approval. (*Division of Occupational Safety*, at p. 803, 234 Cal.Rptr. 661.) No state was obligated to adopt its own plan. But, if a state did so, the plan had to include standards at least as effective as Fed. OSHA’s and extend those standards to state and local employees. California adopted its own plan, which was federally approved. The state then issued a regulation that, according to local fire districts, required

them to maintain three-person firefighting teams. Previously, they had been permitted to maintain two-person teams. (*Division of Occupational Safety*, at pp. 798–799, 234 Cal.Rptr. 661.) The local fire districts sought reimbursement for the increased level of service. The state opposed, arguing the requirement was mandated by federal law.

The court agreed with the fire districts. As the court explained, a Fed. OSHA regulation arguably required the maintenance of three-person firefighting teams. (*Division of Occupational Safety, supra*, 189 Cal.App.3d at p. 802, 234 Cal.Rptr. 661.) However, that federal regulation specifically excluded local fire districts. (*Id.* at p. 803, 234 Cal.Rptr. 661.) Had the state elected to be governed by *Fed. OSHA standards*, that exclusion would have allowed those fire districts to maintain two-person teams. (*Division of Occupational Safety*, at p. 803, 234 Cal.Rptr. 661.) The conditions for approval of the *state’s plan* required effective enforcement and coverage of public employees. But those conditions did not make the costs of complying with the state regulation federally mandated. “[T]he decision to establish ... a federally approved [local] plan is an option which the state exercises *369 freely.” (*Ibid.*) In other words, the state was not “*compelled* to ... extend jurisdiction over occupational safety to local governmental employers,” which would have otherwise fallen under a federal exclusion. (*Ibid.*) Because the state “was not required to promulgate [the state regulation] to comply with federal law, the exemption for federally mandated costs does not apply.” (*Id.* at p. 804, 234 Cal.Rptr. 661.)¹³

San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*) provides another example. In *Goss v. Lopez* (1975) 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, the United States Supreme Court held that if a school principal chose to recommend a student for expulsion, federal due process principles required the school district to give that student a hearing. Education Code section 48918 provided for expulsion hearings. (*San Diego Unified*, at p. 868, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Under Education Code section 48915, a school principal had *767 discretion to recommend expulsion under certain circumstances, but was compelled to recommend expulsion for a student who possessed a firearm. (*San Diego Unified*, at p. 869, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Federal law at the time did not require expulsion for a student who brought a gun to school. (*Id.* at p. 883, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

The school district argued it was entitled to reimbursement of *all* expulsion hearing costs. This court drew a distinction between discretionary and mandatory expulsions. We

concluded the costs of hearings for *discretionary* expulsions flowed from a federal mandate. (**60 *San Diego Unified, supra*, 33 Cal.4th at pp. 884–890, 16 Cal.Rptr.3d 466, 94 P.3d 589.)¹⁴ We declined, however, to extend that rule to the costs related to *mandatory* expulsions. Because it was *state law* that required an expulsion recommendation for firearm possession, all hearing costs triggered by the mandatory expulsion provision were reimbursable state-mandated expenses. (*Id.* at pp. 881–883, 16 Cal.Rptr.3d 466, 94 P.3d 589). As was the case in *Hayes*, the key factor was how the costs came to be imposed on the entity that was required to bear them. The school principal could avoid the cost of a federally-mandated hearing by choosing not to recommend an expulsion. But, when a state statute *required* an expulsion recommendation, the attendant hearing costs did not flow from a federal mandate. (*San Diego Unified, supra*, 33 Cal.4th at p. 881, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

2. Application

Review of the Commission’s decision requires a determination as to whether federal statutory, administrative, or case law imposed, or compelled the Regional Board to impose, the challenged requirements on the Operators.

It is clear federal law did not compel the Regional Board to impose these particular requirements. There was no evidence the state was compelled to administer its *own* permitting system rather than allowing the EPA do so under the CWA. (33 U.S.C. § 1342(a).) In this respect, the case is similar to *Division of Occupational Safety, supra*, 189 Cal.App.3d 794, 234 Cal.Rptr. 661. Here, as in that case, the state chose to administer its own program, finding it was “in the interest of the people of the state, *in order to avoid direct regulation by the federal government* of persons already subject to regulation” under state law. (*Wat. Code*, § 13370, subd. (c), italics added.) Moreover, the Regional Board was not required by federal law to impose any specific permit conditions. The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum *370 extent practicable. But the EPA’s regulations gave the board discretion to determine which *768 specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).) This case is distinguishable from *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, where the state risked the loss of subsidies and tax credits for all its resident businesses if it failed to comply with federal legislation. Here, the State was not compelled by federal law to impose any particular

requirement. Instead, as in *Hayes, supra*, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the Regional Board had discretion to fashion requirements which it determined would meet the CWA’s maximum extent practicable standard.

^{18]}^{19]}The State argues the Commission failed to account for the flexibility in the CWA’s regulatory scheme, which conferred discretion on the State and regional boards in deciding what conditions were necessary to comply with the CWA. In exercising that discretion, those agencies were required to rely on their scientific, technical, and experiential knowledge. Thus, the State contends the Permit itself is the best indication of what requirements *would have been imposed* by the EPA if the Regional Board had not done so, and the Commission should have deferred to **61 the board’s determination of what conditions federal law required.

We disagree that the Permit itself demonstrates what conditions would have been imposed had the EPA granted the Permit. In issuing the Permit, the Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. (*City of Burbank, supra*, 35 Cal.4th at pp. 627–628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law.

^{10]}^{11]}We also disagree that the Commission should have deferred to the Regional Board’s conclusion that the challenged requirements were federally mandated. That determination is largely a question of law. Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board’s expertise in reaching that finding would be appropriate. The board’s legal authority to administer the CWA and its technical experience in water quality control would call on sister agencies as well as courts to defer to that finding.¹⁵ The State, however, provides no authority for the proposition that, absent such a finding, the Commission should defer to a state agency as to whether requirements were state or federally mandated. Certainly, in a trial court action challenging the *board’s authority* to impose specific permit conditions, the board’s findings regarding what conditions satisfied the federal standard would be entitled to deference. (See, e.g., *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817–818, 85 Cal.Rptr.2d 696, 977 P.2d 693 *769) Resolution of those questions would bring into play the particular

technical expertise possessed by members of the regional board. In those circumstances, the party challenging the board’s decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. (*Rancho Cucamonga*, at p. 1387, 38 Cal.Rptr.3d 450; *Building Industry*, *supra*, 124 Cal.App.4th at pp. 888–889, 22 Cal.Rptr.3d 128.)

Reimbursement proceedings before the Commission are different. The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California’s constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.

^{112]}Section 6 establishes a general rule requiring reimbursement of all state-mandated costs. *Government Code section 17556, subdivision (c)*, codifies an exception to that *371 rule. Typically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies. (See *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 23, 109 Cal.Rptr.3d 329, 230 P.3d 1117; see also, *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67, 172 Cal.Rptr.3d 56, 325 P.3d 460.) Here, the State must explain why federal law mandated these requirements, rather than forcing the Operators to prove the opposite. The State’s proposed rule, requiring the Commission to defer to the Regional Board, would leave the Commission with no role to play on the narrow question of who must pay. Such a result would fail to honor the Legislature’s **62 intent in creating the Commission.

Moreover, the policies supporting article XIII B of the California Constitution and section 6 would be undermined if the Commission were required to defer to the Regional Board on the federal mandate question. The central purpose of article XIII B is to rein in local government spending. (*City of Sacramento*, *supra*, 50 Cal.3d at pp. 58–59, 266 Cal.Rptr. 139, 785 P.2d 522.) The purpose of section 6 is to protect local governments from state attempts to impose or shift the costs of new programs or increased levels of service by entitling local governments to reimbursement. (*County of San Diego*, *supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Placing the burden on the state to demonstrate that a requirement is federally mandated, and thus excepted from reimbursement, serves those purposes.

Applying the standard of review described above, we evaluate the entire record and independently review the Commission’s determination the challenged conditions were not federal mandates. We conclude the Commission was correct. These permit conditions were not federally mandated.

***770 a) The inspection requirements**

^{113]}Neither the CWA’s “maximum extent practicable” provision nor the EPA regulations on which the State relies expressly required the Operators to inspect these particular facilities or construction sites. The CWA makes no mention of inspections. (33 U.S.C. § 1342(p)(3)(B)(iii).) The regulations required the Operators to include in their permit application a description of priorities and procedures for inspecting certain industrial facilities and construction sites, but suggested that the Operators would have discretion in selecting which facilities to inspect. (See C.F.R. § 122.26(d)(2)(iv)(C)(1).) The regulations do not mention commercial facility inspections at all.

Further, as the Operators explained, state law made the *Regional Board* responsible for regulating discharges of waste within its jurisdiction. (*Wat. Code, §§ 13260, 13263*.) This regulatory authority included the power to “inspect the facilities of any person to ascertain whether ... waste discharge requirements are being complied with.” (*Wat. Code, § 13267, subd. (c)*.) Thus, state law imposed an overarching mandate that the Regional Board inspect the facilities and sites.

In addition, federal law and practice required the Regional Board to inspect all industrial facilities and construction sites. Under the CWA, the State Board, as an issuer of NPDES permits, was required to issue permits for storm water discharges “associated with industrial activity.” (33 U.S.C. § 1342(p)(3)(A).) The term “industrial activity” includes “construction activity.” (40 C.F.R. § 122.26(b)(14)(x).) The Operators submitted evidence that the State Board had satisfied its obligation by issuing a general industrial activity stormwater permit and a general construction activity stormwater permit. Those statewide permits imposed controls designed to reduce pollutant discharges from industrial facilities and construction sites. Under the CWA, those facilities and sites could operate under the statewide permits rather than obtaining site-specific pollutant discharge permits.

The Operators showed that, in those statewide permits, the State Board had placed responsibility for inspecting facilities and sites on the *Regional Board*. The Operators

submitted letters from the EPA indicating the State and regional boards were responsible for enforcing the terms of the statewide permits. The Operators also noted the State Board was authorized **63 to charge a fee to facilities and sites that subscribed to the statewide permits (*372 *Wat. Code*, § 13260, subd. (d)), and that a portion of that fee was earmarked to pay the Regional Board for “inspection and regulatory compliance issues.” (*Wat. Code*, § 13260, subd. (d)(2)(B)(iii).) Finally, there was evidence the Regional Board offered to pay the County to inspect industrial facilities. There would have been little reason to make that offer if federal law required the County to inspect those facilities.

*771 This record demonstrates that the Regional Board had primary responsibility for inspecting these facilities and sites. It shifted that responsibility to the Operators by imposing these Permit conditions. The reasoning of *Hayes*, *supra*, 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, provides guidance. There, the EHA required the state to provide certain services to special education students, but gave the state discretion in implementing the federal law. (*Hayes*, at p. 1594, 15 Cal.Rptr.2d 547.) The state exercised its “true discretion” by selecting the specific requirements it imposed on local governments. As a result, the *Hayes* court held the costs incurred by the local governments were state-mandated costs. (*Ibid.*) Here, state and federal law required the Regional Board to conduct inspections. The Regional Board exercised its discretion under the CWA, and shifted that obligation to the Operators. That the Regional Board did so while exercising its permitting authority under the CWA does not change the nature of the Regional Board’s action under section 6. Under the reasoning of *Hayes*, the inspection requirements were not federal mandates.

The State argues the inspection requirements were federally mandated because the CWA required the Regional Board to impose permit controls, and the EPA regulations contemplated that some kind of operator inspections would be required. That the EPA regulations contemplated some form of inspections, however, does not mean that federal law required the scope and detail of inspections required by the Permit conditions.¹⁶ As explained, the evidence before the Commission showed the opposite to be true.

b) The trash receptacle requirement

¹⁴The Commission concluded the trash receptacle requirement was not a federal mandate because neither the CWA nor the regulation cited by the State explicitly

required the installation and maintenance of trash receptacles. The State contends the requirement was mandated by the CWA and by the EPA regulation that directed the Operators to include in their application a “description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems.” (40 C.F.R. § 122.26(d)(2)(iv)(A)(3).)

The Commission’s determination was supported by the record. While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make *772 those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).) No regulation cited by the State required trash receptacles at **64 transit stops. In addition, there was evidence that the EPA had issued permits to other municipal storm sewer systems in Anchorage, Boise, Boston, Albuquerque, and Washington, D.C. that did not require trash receptacles at transit stops. The fact the EPA itself had issued permits in other cities, but did not include the trash receptacle condition, undermines the argument that the requirement was federally mandated.

c) Conclusion

Although we have upheld the Commission’s determination on the federal mandate question, the State raised other arguments in its writ petition. Further, the issues presented in the Operators’ cross-petition were not addressed by either the trial court or the Court of Appeal. We remand the matter so those issues can be addressed in the first instance.

***373 III. DISPOSITION**

We reverse the judgment of the Court of Appeal and remand for further proceedings consistent with our opinion.

We Concur:

Cantil–Sakaue, C.J.

Werdegar, J.

Chin, J.

CONCURRING AND DISSENTING OPINION BY
CUÉLLAR, J.

A local government is entitled to reimbursement from the state when the Legislature or a state agency requires it to provide new programs or increased service. (*Cal. Const.*, art. XIII B, § 6, subd. (a).) But one crucial exception coexists with this rule. It applies where the new program or increased service is mandated by a federal statute or regulation. (*Gov. Code*, § 17556, subd. (c).) We consider in this case whether certain conditions to protect water quality included in a permit from the Regional Water Quality Board, Los Angeles Region (Regional Board or Board)—specifically, installation and maintenance of trash receptacles at transit stops, as well as inspections of certain commercial and industrial facilities and construction sites—constitute state mandates subject to reimbursement, or federal mandates within the statutory reimbursement exception.

What the majority concludes is that federal law did not compel imposition of the conditions, and that the local agencies would not necessarily have been required to comply with them had they not been imposed by the state. In doing so, the majority upholds and treats as correct a decision by the Commission on State Mandates (the Commission) that is flawed in its approach and far too parsimonious in its analysis. This is no small feat: not *773 only must the majority discount any expertise the Regional Board might bring to bear on the mandate question (see maj. opn., *ante*, 207 Cal.Rptr.3d at pp. 61–62, 378 P.3d at pp. 370–371), but it must also overlook the Commission’s reliance on an overly narrow analytical framework and prop up the Commission’s decision with evidence on which the agency *could have relied*, rather than that on which it did (see *id.* at pp. 62–64, 378 P.3d at pp. 371–373).

Moreover, when the majority considers whether the permit conditions are indeed federally mandated, it purports to apply *de novo* review to the Commission’s legal determination. (See maj. opn., *ante*, at pp. 207 Cal.Rptr.3d at pp. 55, 61, 62, 378 P.3d at pp. 365, 370, 371.) What it actually applies seems far more deferential to the Commission’s decision—something akin to substantial evidence review—despite the Commission’s own failure in affording deference **65 to the Regional Board and, more generally, its reliance on the wrong decision-making framework. (Cf. *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052, 63 Cal.Rptr.3d 82, 162 P.3d 596 [“A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the

record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question”].) Indeed, what the majority overlooks is that the Commission itself should have considered the effect of the evidence on which the majority now relies in deciding whether the challenged permit conditions were necessary to comply with federal law. And in doing so, the Commission should have extended a measure of deference to the Regional Board’s expertise in administering the statutory scheme. (See *County of Los Angeles v. Cal. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997, 50 Cal.Rptr.3d 619 (*State Water Board*)).

Because the Commission failed to do so, and because the Commission’s interpretation of the federal Clean Water Act (the CWA; 33 U.S.C. § 1251 *et seq.*) failed to account for the complexities of the statute, I would reverse the Court of Appeal’s judgment and remand with instructions for the Commission to reconsider its decision. So I concur in the majority’s judgment reversing the Court of Appeal, but dissent from its conclusion upholding the Commission’s decision rather than remanding the matter for further proceedings.

I.

To determine whether it is the state rather than local governments that should bear *374 the entirety of the financial burden associated with a new program or increased service, the Commission must examine the nature of the federal scheme in question. That scheme is the CWA, a statute Congress amended in 1972 to establish the National Pollutant Discharge Elimination System (the NPDES) as a means of achieving and enforcing limitations on *774 pollutant discharges. (See *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 203–204, 96 S.Ct. 2022, 48 L.Ed.2d 578.) The role envisioned for the states under the NPDES is a major one, encompassing both the opportunity to assume the primary responsibility for the implementation and enforcement of federal effluent discharge limitations by issuing permits as well as the discretion to enact requirements that are more onerous than the federal standard. (See 33 U.S.C. §§ 1251(b), 1342(b).)

But states undertaking such implementation must do so in a manner that complies with regulations promulgated by the Environmental Protection Agency (the EPA), as well as the CWA’s broad provisions (including the “maximum extent practicable” standard (33 U.S.C. § 1342(p)(3)(B)(iii))), and subject to the EPA’s continuing revocation authority (see *id.*, § 1342(c)(3)). Despite the

breadth of the requirements the statute imposes on states assuming responsibility for permitting enforcement and the expansive nature of the EPA's revocation authority, neither the statute nor its implementing regulations include a safe harbor provision establishing a minimum level of compliance with the federal standard—an absence the majority tacitly acknowledges. (See maj. opn., ante, 207 Cal.Rptr.3d at p. 60, 378 P.3d at p. 369 [“the Regional Board was not required by federal law to impose any specific permit conditions”].) Instead, implementation of the federal mandate requires the state agency—here, the Regional Board—to exercise technical judgments about the feasibility of alternative permitting conditions **66 necessary to achieve compliance with the federal statute.

With no statutory safe harbor that the Regional Board could have relied on to ensure the EPA's approval of the state permitting process, the Board interpreted the federal standard in light of the statutory text, implementing regulations, and its technical appraisal of potential alternatives. In discharging its own role, the Commission was then bound to afford the Regional Board a measure of “sister-agency” deference. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031 [explaining that “the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation”].) In this case, the Regional Board informed localities that, in its view, the various permit conditions it imposed would satisfy the maximum extent practicable standard. The EPA agreed the requirements were within the scope of the federal standard. The Regional Board's judgment that these conditions will control pollutant discharges to the extent required by federal law is at the core of the agency's institutional expertise. That expertise merits a measure of deference because the Regional Board's ken includes not only its greater familiarity with the CWA (relative to other entities), but also technical knowledge relevant to judgments about the water quality consequences of particular permitting conditions relevant to the provisions of the *775 CWA. (See, e.g., 33 U.S.C. § 1342(p)(3)(B)(iii) [requiring that permits include “management practices, control techniques and system, design and engineering methods, and such other provisions as ... the State determines appropriate for the control of such pollutants”].) Casting aside the Regional Board's expertise on the issue at hand, the majority nonetheless upholds the Commission's ruling.

Remand to the Commission would have been the more appropriate course for multiple reasons. First, the Commission applied the wrong framework for its analysis.

It failed to consider all the evidence relevant to whether the permit conditions were necessary for compliance with federal law. The commission compounded its error by relying on an interpretation of the CWA that misconstrues the federal statutory scheme governing the state permitting process.

*375 In particular, the Commission treated the problem as essentially a simple matter of searching the statutory text and regulations for precisely the same terms used by the Regional Board's permit conditions. Unless the requirement in question is referenced explicitly in a federal statutory or regulatory provision, the Commission's analysis suggests, the requirement cannot be a federal mandate. With respect to trash receptacles, the Commission stated: “Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that ‘mandate costs that exceed the mandate in the federal law or regulation.’ ” And with respect to industrial facility inspections, the Commission said this: “Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the ‘owner or operator of the discharge’) the Commission finds that the state has freely chosen to impose **67 these activities on the permittees.” (Fn. omitted.)

Existing law does not support this method of determining what constitutes a federal mandate. Instead, our past decisions emphasize the need to consider the implications of multiple statutory provisions and broader statutory context when interpreting federal law to determine if a given condition constitutes a federal mandate. (See *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*); see also *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 890, 16 Cal.Rptr.3d 466, 94 P.3d 589 [“challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, *in context*, de minimis—should be treated as part and parcel of the underlying federal mandate” (italics added)].) In contrast, *776 the Commission's overly narrow approach to determining what constitutes a federal mandate risks creating a standard that will never be met so long as the state retains any shred of discretion to implement a federal program. It cannot be that so long as a federal statute or regulation does not expressly require every permit term issued by a state agency, then the permit is a state, rather than a federal, mandate. But this is

precisely how the Commission analyzed the issue—an analysis that, remarkably, the majority does not even question. Instead, the majority combs the record for evidence that could have supported the result the Commission reached. In so doing, the majority implicitly acknowledges that the Commission’s approach to resolving the question at the heart of this case was deficient.

But if the Commission applied the wrong framework for its analysis, the right course is to remand. Doing so would obviate the need to cobble together scattered support for a decision by the Commission that was premised, in the first instance, on the Commission’s own misconstrual of the inquiry before it. Instead, we should give the Commission an opportunity to reevaluate its conclusion in light of the entire record and to, where appropriate, solicit further information from the parties to shed light on what permit conditions are necessary for compliance with federal law.

The potential consequences of allowing the Commission to continue on its present path are quite troubling. For if the law were as the Commission suggests, the state would be unduly discouraged from participating in federal programs like the NPDES—even though participation might otherwise be in California’s interest—if the state knows *ex ante* that it will be unable to pass along the expenses to the local areas that experience the most costs and benefits from the mandate at issue. Our law on unfunded mandates does not compel such a result. Nor is there an apparent prudential rationale in support of it.

The Commission’s approach also fails to appreciate the EPA’s role in implementing (through its interpretation and enforcement of the CWA) statutory requirements that the CWA describes in relatively broad terms. Indeed, what may be “practicable” in Los Angeles *376 may not be in San Francisco, much less in Kansas City or Detroit. (See *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 889, 22 Cal.Rptr.3d 128 (*Building Industry Assn.*) [explaining that “the maximum extent practicable standard is a highly flexible concept that depends on balancing numerous factors, including the particular control’s technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness”].) It also suggests a lack of understanding of two interrelated matters on which the Regional **68 Board likely has expertise: the consequences of the measures included as permit conditions relative to any *777 alternatives and the interpretation of a complex federal statute governing regulation of the environment.

Second, beyond failing to consider all the relevant

evidence bearing on the necessity of the imposed permit conditions, the Commission failed to extend any meaningful deference to the Regional Board’s conclusions—even though such deference was warranted given that the nature of the decisions involved in interpreting the CWA included evaluating appropriate alternatives and determining which of those were necessary to satisfy the federal standard. (See *State Water Board, supra*, 143 Cal.App.4th at p. 997, 50 Cal.Rptr.3d 619 [“we defer to the regional board’s expertise in construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems”]; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450 (*Rancho Cucamonga*) [“consideration [should be] given to the [regional board’s] interpretations of its own statutes and regulations”]; *Building Industry Assn., supra*, 124 Cal.App.4th at p. 879, fn. 9, 22 Cal.Rptr.3d 128 [“we do consider and give due deference to the Water Boards’ statutory interpretations [of the CWA] in this case”]; see also *Cal. Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 389–390, 196 Cal.Rptr.3d 94, 362 P.3d 792 [explaining that “an agency’s expertise and technical knowledge, especially when it pertains to a complex technical statute, is relevant to the court’s assessment of the value of an agency interpretation”].) In the direct challenge to the permit at issue here, the local agencies argued that the Regional Board exceeded even those requirements associated with the maximum extent practicable standard, an argument the appellate court rejected in an unpublished section of its opinion. Because of its failure to afford any deference to the Regional Board or to conduct an analysis more consistent with the relevant standard of review, the Commission essentially forces the Board to defend its decision twice: once on direct challenge and a second time before the Commission.

Conditions as prosaic as trash receptacle requirements initially may not seem to implicate the Regional Board’s expertise. Yet its unique experience and technical competence matter even with respect to these conditions, because the use of such conditions implicates a decision not to use alternatives that might require greater conventional expert judgment to evaluate. Moreover, the Regional Board is likely to accumulate a distinct and greater degree of knowledge regarding issues such as the reactions of stakeholders to different requirements, and related factors relevant to determining which conditions are necessary to satisfy the CWA’s maximum extent practicable standard.

The Commission acknowledged that the State Water Resources Control Board—as well as the EPA—believed

the permit requirements did not exceed *778 this federal standard. “The comments of the State Water Board and U.S. EPA,” the Commission noted, “assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations.” But the Commission afforded these conclusions no clear deference in determining whether the requirements were state mandates.

Nor is the majority correct in suggesting that the Commission had only a limited responsibility, if it had one at all, to extend any deference to the Regional Board. (See maj. opn., **69 *ante*, 207 Cal.Rptr.3d at pp. 61–62, 378 P.3d at pp. 370–371.) The Regional Board’s judgment as to whether the imposed permit *377 conditions were necessary to comply with federal law was a prerequisite to the Commission’s own task, which was to review the Board’s determination in light of all the relevant evidence. To the extent ambiguity exists as to whether the Regional Board’s conclusions incorporated any findings that these conditions were necessary to meet the federal standard (see *id.* at pp. 61–62, 378 P.3d at pp. 370–371), remand to clarify the Board’s position is in order. By instead simply upholding the Commission’s conclusion without remand, the majority displaces any meaningful role for the Regional Board’s expert judgment.

The majority does so even though courts have routinely emphasized the pivotal role regional boards play in interpreting the CWA’s intricate mandate. (See *State Water Board, supra*, 143 Cal.App.4th at p. 997, 50 Cal.Rptr.3d 619; *Rancho Cucamonga, supra*, 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450.) And for good reason: If the Regional Board’s judgment is that the trash receptacle and inspection requirements are necessary to control pollutant discharges to the maximum extent practicable, such a conclusion is well within the purview of its expertise. Unsurprisingly, then, we have never concluded that the technical knowledge relevant to interpreting the requirements of the CWA—a statute that lacks a safe harbor and where discerning what phrases such as maximum extent practicable mean given existing conditions and technology is complex—lies beyond the ambit of the Regional Board’s expertise, or otherwise proves distinct from the sort of expertise that merits deference.

Third, the Commission devoted insufficient attention in its analysis to the role of states in implementing the CWA, and to how that role can be harmonized with the significant protections against unfunded mandates that the state Constitution provides. (See *Cal. Const., art. XIII B, § 6, subd. (a).*) By allowing states to assume such an important role in implementing its provisions, the CWA reflects

principles of cooperative federalism. (See 33 U.S.C. §§ 1251(b), 1342(b); see also *Boise Cascade Corp. v. EPA* (9th Cir. 1991) 942 F.2d 1427, 1430 [“The federal-state relationship established by the [Clean Water] Act is ... illustrated in Congress’ goal of encouraging states to ‘assume the major role in the operation of the NPDES program’ ”].) In accordance with the CWA’s express provisions, California chose to assume *779 the responsibility for implementation of the NPDES program in the state—a role that requires further specification of permitting conditions. (See 33 U.S.C. § 1342(c)(3) [states must administer permitting programs “in accordance with requirements of this section,” including compliance with the maximum extent practicable standard].) In the process, the state must comply with the constitutional protections against unfunded mandates requiring reimbursement of localities if permit conditions exceed what is necessary to comply with the relevant federal mandate. But given the nature of the relevant CWA provisions—and particularly the maximum extent practicable standard—it is wrong to assume that the conditions at issue in this case exceed what is necessary to comply with the CWA simply because neither the statute nor its regulations explicitly mention those conditions. The consequence of that assumption, moreover, risks discouraging the state from assuming cooperative federalism responsibilities—and may even encourage the state to withdraw from administering the NPDES. Indeed, counsel for the state indicated at oral argument that if the Commission’s reasoning were upheld—and the state were required to foot the bill for any **70 conditions not expressly mentioned in the applicable federal statutes or regulations—it might think twice about entering into such arrangements of cooperative federalism.

In light of these concerns with the Commission’s approach to this case, it is difficult to see the basis for—or utility of—upholding the Commission’s decision, even under the inscrutable standard of review the majority employs. (See *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 586, 128 Cal.Rptr.2d 514 [substantial evidence review requires that all evidence be considered, including evidence that does not support the agency’s decision]; see also *Sierra Club v. U.S. Army Corps of Engineers* (2d Cir. 1983) 701 F.2d 1011, 1030 [“the court may properly be skeptical as to whether an [agency report’s] conclusions have a substantial basis in fact if the responsible agency has *378 apparently ignored the conflicting views of other agencies having pertinent expertise”].) The better course, in my view, would be for us to articulate the appropriate standard for evaluating the question whether these permit conditions are state mandates and then remand for the Commission to apply it in the first instance.

II.

The Commission relied on a narrow approach that only compares the terms of a permit with the text of the CWA and its implementing regulations. Instead, the Commission should have employed a more flexible methodology in determining whether the permit conditions were federally mandated. Such a flexible approach accords with our prior case law. (See *City of Sacramento, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522 [whether local government appropriations are *780 federally mandated and therefore exempt from taxing and spending limitations under section 9, subdivision (b), of article XIII B of the California Constitution depends on, inter alia, the nature and purpose of the federal program, whether its design suggests an intent to coerce, when state or local participation began, and the legal and practical consequences of nonparticipation or withdrawal].) Moreover, it would have the added benefit of not discouraging the state from participating in ventures of cooperative federalism.

The majority may be correct that the facts of *City of Sacramento* are distinguishable. (See maj. opn., *ante*, 207 Cal.Rptr.3d at p. 60, 378 P.3d at p. 369.) In that case, the state risked forsaking subsidies and tax credits for its resident businesses if it failed to comply with federal law requiring that unemployment insurance protection be extended to local government employees. (*Id.* at p. 56, 378 P.3d at p. 366 .) Here, in contrast, the negative consequences of failing to comply with federal law may seem less severe, at least in fiscal terms: the EPA may determine that the state is not in compliance with the CWA and reassert authority over permitting. (See 33 U.S.C. § 1342(c)(3).) But *City of Sacramento* nonetheless remains relevant, even though a precisely comparable level of coercion may not exist here. The flexible approach we articulated in that case remains the best way to ensure that some weight is given to the Regional Board's technical expertise, and the conclusions resulting therefrom, while also taking account of the cooperative federalism arrangements built into the CWA.

So instead of adopting an approach foreign to our precedent, the Commission should have begun its analysis with the statutory and regulatory text—and then it should have considered other relevant materials and record evidence bearing on whether the permit conditions are necessary **71 to satisfy federal law. Crucially, such evidence includes how the federal regulatory scheme operates in practice. The Commission could have examined, for instance, previous permits issued by the EPA

in similarly situated jurisdictions, comparing them to the inspection and trash receptacle requirements the Regional Board imposed here and giving due consideration to the EPA's conclusion that the maximum extent practicable standard is applied in a highly site-specific and flexible manner in order to account for unique local challenges and conditions. (See 64 Fed. Reg. 68722, 68754 (Dec. 8, 1999).) The Commission could also have considered whether, instead of identifying permitting conditions necessary to comply with the CWA, the state shifted onto local governments responsibility to conduct inspections or provide trash receptacles. The majority wisely notes that these are factors the Commission *could* have examined. (See maj. opn., *ante*, at pp. 62–64, 378 P.3d at pp. 371–373.) But the Commission mentioned this evidence only briefly, failing to grapple in any meaningful way with its implications for the issue at hand. We should allow the Commission an opportunity to do so in the first instance.

*781 The Commission should have also accorded appropriate deference to the Regional Board's conclusions regarding how best to comply with the federal maximum extent practicable standard. One way to ensure that such deference is given would be to place on the party seeking reimbursement the burden of demonstrating that the challenged permit conditions clearly exceed the federal standard, or that they were otherwise unnecessary *379 to reduce pollutant discharges to the maximum extent practicable. Doing so would make sense where the state is implementing a federal program that envisions routine state participation, the federal program does not itself define the minimum degree of compliance required, and the state's implementing agency reasonably determines in its expertise that certain conditions are necessary to comply with the applicable federal standard.

* * *

The Commission's decision—and the approach that produced it—fails to accord with existing law and with the nature of the applicable federal scheme. The state is not responsible for reimbursing localities for permit conditions that are necessary to comply with federal law, a circumstance that renders interpretation of the CWA central to this case. A core principle of the CWA is to facilitate cooperative federalism, by allowing states to take on a critical responsibility in exchange for compliance with a set of demanding standards overseen by a federal agency capable of withdrawing approval for noncompliance. (See *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239 [“The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: ‘to restore and maintain the chemical, physical, and biological integrity of the Nation's waters’ ”]; *Shell Oil Co. v. Train*

(9th Cir. 1978) 585 F.2d 408, 409 [“Shell’s complaint must be read against the background of the cooperative federal-state scheme for the control of water pollution”].) The Commission failed to interpret the statute in light of nuances in its text and structure. And it failed to offer even a modicum of deference to the Regional Board’s interpretation, despite the Board’s clear expertise that the technical nature of the questions necessary to interpret the scope of the CWA demands.

Accordingly, I would remand the matter to the Court of Appeal with directions that it instruct the Commission to reconsider its decision. On reconsideration, the Commission should appropriately defer to the **72 Regional Board, consider all relevant evidence bearing on the question at hand, and ensure the evidence clearly shows the challenged permit conditions were not necessary to comply with the federal mandate. This is the standard that most *782 thoroughly reflects our existing law and the

nature of the CWA. Any dilution of it exacerbates the risk of undermining the nuanced federal-state arrangement at the heart of the CWA.

We Concur:

Liu, J.

Kruger, J.

All Citations

1 Cal.5th 749, 378 P.3d 356, 207 Cal.Rptr.3d 44, 16 Cal. Daily Op. Serv. 9501, 2016 Daily Journal D.A.R. 8996

Footnotes

- 1 The cities involved are the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.
- 2 The systems at issue here are “municipal separate storm sewer systems,” sometimes referred to by the acronym “MS4.” (40 C.F.R. § 122.26(b)(19) (2001).) A “municipal separate storm sewer” is a system owned or operated by a public agency with jurisdiction over disposal of waste and designed or used for collecting or conveying storm water. (40 C.F.R. § 122.26(b)(8) (2001).) Unless otherwise indicated, all further citations to the Code of Federal Regulations are to the 2001 version.
- 3 For a state to acquire permitting authority, the governor must give the EPA a “description of the program [the state] proposes to establish,” and the attorney general must affirm that the laws of the state “provide adequate authority to carry out the described program.” (33 U.S.C. § 1342(b).)
- 4 The EPA may withdraw approval of a state’s program (33 U.S.C. § 1342(c)(3)), and also retains some supervisory authority: States must inform the EPA of all permit applications received and of any action related to the consideration of a submitted application (33 U.S.C. § 1342(d)(1)).
- 5 As to commercial facilities, Part 4(C)(2)(a) required each Operator to inspect each restaurant, automotive service facility, retail gasoline outlet, and automotive dealership within its jurisdiction, and to confirm that the facility employed best management practices in compliance with state law, county and municipal ordinances, a Regional Board resolution, and the Operators’ storm water quality management program (SQMP). For each type of facility, the Permit set forth specific inspection tasks.
Part 4(C)(2)(b) addressed industrial facilities, requiring the Operators to inspect them and confirm that each complied with county and municipal ordinances, a Regional Board resolution, and the SQMP. The Operators also were required to inspect industrial facilities for violations of the general industrial activity stormwater permit, a statewide permit issued by the State Board that regulates discharges from industrial facilities. (See discussion, *post*, at pp. 62–63, 378 P.3d at pp. 371–372.)

- 6 Part 4(E)(4) required inspections for violations of the general construction activity stormwater permit, another statewide permit issued by the State Board. (See discussion, *post*, at pp. 62–63, 378 P.3d at pp. 371–372.)
- 7 “ ‘Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur ... as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#).” (Gov. Code, § 17514.)
- 8 [40 Code of Federal Regulations part 122.26\(d\)\(2\)\(iv\)\(A\)](#) provides that the proposed management plan in an operator’s permit application must be based, in part, on a “description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls,” and that, at a minimum, that description shall include, among other things, a “description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities.” ([40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(A\), \(A\)\(3\).](#))
- 9 [40 Code of Federal Regulations part 122.26\(d\)\(2\)\(iv\)\(B\)](#) provides that the proposed management plan in an operator’s permit application must be based, in part, on a “description of a program, including a schedule, to detect and remove ... illicit discharges and improper disposal into the storm sewer,” and that the proposed program shall include a “description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system.” ([40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(B\), \(B\)\(1\).](#))
- 10 [40 Code of Federal Regulations part 122.26\(d\)\(2\)\(iv\)\(C\)](#) provides that the proposed management plan in an operator’s permit application must be based, in part, on a “description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system,” and that the program shall “[i]dentify priorities and procedures for inspections and establishing and implementing control measures for such discharges.” ([40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(C\), \(C\)\(1\).](#))
- 11 [40 Code of Federal Regulations part 122.26\(d\)\(2\)\(iv\)\(D\)](#) provides that the proposed management plan in an operator’s permit application must be based, in part, on a “description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system,” which shall include, a “description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.” ([40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(D\), \(D\)\(3\).](#))
- 12 The appellants are County and the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palo Verdes, Signal Hill, Vernon, and Westlake Village.
- 13 In the end, the court held that the challenged state regulation did not obligate the local fire district to maintain three-person firefighting teams. Accordingly, the state regulation did not mandate an increase in costs. ([Division of Occupational Safety, supra](#), 189 Cal.App.3d at pp. 807–808, 234 Cal.Rptr. 661.)
- 14 To the extent [Education Code section 48918](#) imposed requirements that went beyond the mandate of federal law, those requirements were merely incidental to the federal mandate, and at most resulted in “a de minimis cost.” ([San Diego Unified, supra](#), 33 Cal.4th at p. 890, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The State does not argue here that the costs of the challenged permit conditions were de minimis.
- 15 Of course, this finding would be case specific, based among other things on local factual circumstances.
- 16 The State also relied on a 2008 letter from the EPA indicating that the requirements to inspect industrial facilities and construction sites fell within the maximum extent practicable standard under the CWA. That letter, however, does not indicate that federal law required municipal storm sewer system operators to inspect all industrial facilities and construction sites within their jurisdictions.

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7 Cal.App.5th 12
Court of Appeal,
Fourth District, Division 1, California.

COUNTY OF SAN DIEGO et al., Plaintiffs and
Appellants,
v.
COMMISSION ON STATE MANDATES et al.,
Defendants and Respondents.

D068657
|
Filed 12/28/2016

Synopsis

Background: Counties filed a petition for writ of administrative mandamus and complaint for declaratory relief challenging Commission on State Mandates decision that costs associated with eight activities required of local governments by the Sexually Violent Predator Act (SVPA) under the Sexual Predator Punishment and Control Act (Jessica’s Law) were not eligible for reimbursement. The Superior Court, San Diego County, No. 37-2014-0005050-CU-WM-CTL, [Richard E.L. Strauss, J.](#), denied petition. Counties appealed.

[Holding:] The Court of Appeal, [Huffman, J.](#), held that spending mandates in SVPA provisions amended by Jessica’s Law were reimbursable state mandates.

Reversed and remanded with directions.

West Headnotes (10)

^[1] **Mental Health**
⚡️Appeal

The issue of whether the Sexual Predator Punishment and Control Act (Jessica’s Law) negated part of the state mandate to carry out activities required of local governments by the Sexually Violent Predator Act (SVPA), under the state constitutional provision precluding a shift of financial responsibility for carrying out state mandates to local agencies, was a legal question

subject to independent review by the Court of Appeal, since it required no reliance on disputed facts. Cal. Const. art. 13 B, § 6; [Cal. Gov’t Code §§ 17556\(f\), 17570](#); [Cal. Welf. & Inst. Code §§ 6601\(i\), 6602, 6603, 6604, 6605, 6608](#).

[Cases that cite this headnote](#)

^[2] **Constitutional Law**
⚡️Presumptions and Construction as to
Constitutionality

If the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution.

[Cases that cite this headnote](#)

^[3] **Constitutional Law**
⚡️Limitations of Rules and Special
Circumstances Affecting Them
Constitutional Law
⚡️Rewriting to save from unconstitutionality

There are limits to the ability of a court to save a statute’s constitutionality through judicial construction, and the court may not, in the exercise of its power to interpret, rewrite the statute.

[Cases that cite this headnote](#)

^[4] **States**
⚡️State expenses and charges and statutory
liabilities

A ballot initiative that modifies statutes previously found by the Commission on State Mandates to impose a state mandate only changes the source of the mandate, as required to exclude

the mandate from the coverage of the state constitutional provision precluding a shift of financial responsibility for carrying out state mandates to local agencies, if the initiative changes the duties imposed by the statutes. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code §§ 17556\(f\), 17570](#).

[Cases that cite this headnote](#)

by the Commission on State Mandates that costs associated with activities required of local governments by the SVPA remained reimbursable state mandates after the passage of Jessica’s Law, where the Court of Appeal determined as a matter of law that the activities remained reimbursable state mandates. [Cal. Const. art. 13 B, § 6](#); [Cal. Gov't Code §§ 17556\(f\), 17570](#); [Cal. Welf. & Inst. Code § 6601\(m\)](#).

[Cases that cite this headnote](#)

[5]

States

🔑 [State expenses and charges and statutory liabilities](#)

The Sexually Violent Predator Act (SVPA) provisions that imposed on counties the costs of providing legal representation, mental health expertise, housing, and transportation in sexually violent predator (SVP) commitment proceedings were reimbursable state mandates, even though the provisions had been amended by ballot initiative in the Sexual Predator Punishment and Control Act (Jessica’s Law), and even though Jessica’s Law expanded the definition of “SVP,” since Jessica’s Law did not change the duties that had been imposed on counties by the Legislature prior to Jessica’s Law. [Cal. Const. art. 13 B, § 6](#); [Cal. Gov't Code §§ 9605, 17556\(f\), 17570](#); [Cal. Welf. & Inst. Code §§ 6600, 6601\(i\), 6602, 6603, 6604, 6605, 6608](#).

[Cases that cite this headnote](#)

[7]

Statutes

🔑 [In general; necessity](#)

The purposes of the “reenactment rule” is to avoid the enactment of statutes in terms so blind that the legislative body is deceived in regard to their effect, and the public, from the difficulty of making the necessary examination and comparison, fails to become apprised of the changes made in the laws. [Cal. Gov't Code § 9605](#).

[Cases that cite this headnote](#)

[6]

Mental Health

🔑 [Appeal](#)

Any error in trial court’s admission of a report issued by the California Department of Mental Health under the Sexually Violent Predator Act (SVPA), stating that the number of sexually violent predator (SVP) commitment referrals received by the Department of Corrections increased “nearly 800 percent” after the passage of Sexual Predator Punishment and Control Act (Jessica’s Law) expanded the definition of “SVP,” was not prejudicial to counties and thus was harmless as to their challenge to the decision

[8]

States

🔑 [State expenses and charges and statutory liabilities](#)

If the source of a mandate is a ballot initiative, and not state legislation, then the constitutional requirement to fund or suspend the operation of the mandate does not apply. [Cal. Const. art. XIII B, § 6\(b\)](#).

[Cases that cite this headnote](#)

[9]

States

🔑 [State expenses and charges and statutory liabilities](#)

The determination by the Commission on State

Mandates of whether or not a program is state-mandated controls the application of the constitutional suspend-or-fund requirement, but the suspend-or-fund requirement does not impact the Commission’s determination as to whether a program is state-mandated or mandated by the People through a ballot initiative. [Cal. Const. art. XIII B, § 6\(b\)](#).

[Cases that cite this headnote](#)

[10]

States

🔑 [State expenses and charges and statutory liabilities](#)

The Legislature’s ability to suspend a state mandate by defunding the program is not an element indicating whether a voter-enacted ballot measure constitutes a subsequent change in law supporting reassessment of an earlier Commission on State Mandates decision. [Cal. Const. art. XIII B, § 6\(b\)](#); [Cal. Gov’t Code § 17570\(b\)](#).

[See 9 Witkin, Summary of Cal. Law \(10th ed. 2005\) Taxation, § 122.](#)

[Cases that cite this headnote](#)

APPEAL from a judgment of the Superior Court of San Diego County, Richard E.L. Strauss, Judge. Reversed. (Super. Ct. No. 37-2014-0005050-CU-WM-CTL)

Attorneys and Law Firms

[Thomas E. Montgomery](#), County Counsel (San Diego), [Timothy M. Barry](#), Chief Deputy County Counsel, [Mary C. Wickham](#), County Counsel (Los Angeles), [Sangkee Peter Lee](#), Deputy County Counsel, [Leon J. Page](#), County Counsel (Orange), [Suzanne E. Shoai](#), Deputy County Counsel, [Robyn Truitt Drivon](#), County Counsel (Sacramento), [Krista Castlebary Whitman](#), Assistant County Counsel, and [Jean-Rene Claude Basle](#), County Counsel (San Bernardino), for Plaintiffs and Appellants.

Jennifer B. Henning for California State Association of

Counties and League of California Cities as Amici Curiae on behalf of Plaintiffs and Appellants.

[Kamala D. Harris](#), Attorney General, [Douglas J. Woods](#), Assistant Attorney General, [Mark R. Beckington](#) and [Kim L. Nguyen](#), Deputy Attorneys General, for Defendants and Respondents California Department of Finance, California State Controller, and the State of California.

[Camille Shelton](#), Chief Legal Counsel, and [Matthew B. Jones](#), Commission Counsel, for Defendant and Respondent Commission on State Mandates.

Opinion

HUFFMAN, J.

*1 In 1998 the Commission on State Mandates (Commission), established by the Legislature to determine when the state is constitutionally required to reimburse local governments and school districts for state-mandated costs, concluded costs associated with eight activities required of local governments by the then-newly passed Sexually Violent Predator Act (SVPA, [Welf. & Inst. Code, § 6600 et seq.](#)) were eligible for reimbursement. Fifteen years later, at the request of the Department of Finance (DOF), the Commission revisited that decision based on the passage of Proposition 83 in 2006. The Commission concluded that six of the duties it deemed state-mandated in 1998 were instead mandated by the ballot initiative and, therefore, the costs of those activities to local governments were no longer eligible for reimbursement. The Counties of San Diego, Los Angeles, Orange, Sacramento and San Bernardino (Counties) challenged the Commission’s decision by filing a petition for writ of administrative mandamus in San Diego County Superior Court.

The Counties now appeal the trial court’s judgment upholding the Commission’s decision. Our review of the relevant constitutional and statutory provisions lead us to reach the opposite conclusion. For the reasons set forth below, we reverse the trial court’s decision and direct the court to modify its judgment to issue a writ of mandate directing the Commission to set aside the decisions challenged in this action and reconsider the DOF’s request in a manner consistent with this opinion.

BACKGROUND

A. Constitutional Subvention Requirement and Implementing Legislation

When the Legislature mandates a new program or higher level of service on a local government, the state is constitutionally required to reimburse the locality for the costs of the mandate. (Cal. Const., art. XIII B, § 6, subd. (a).) This requirement was the result of the passage of two related ballot initiatives, Proposition 13 in 1978 and Proposition 4 in 1979. Proposition 13 added article XIII A to the Constitution, which was “aimed at controlling ad valorem property taxes and the imposition of new ‘special taxes’ ” on the citizens of California. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486, 280 Cal.Rptr. 92, 808 P.2d 235 (*County of Fresno*)). Proposition 4 added article XIII B, placing “limitations on the ability of both state and local governments to appropriate funds for expenditures.” (*County of Fresno*, at p. 486, 280 Cal.Rptr. 92, 808 P.2d 235.) “ ‘Articles XIII A and XIII B work in tandem, together restricting California governments’ power both to levy and to spend [taxes] for public purposes.’ ” (*City of Sacramento [v. State of California]* (1990)] 50 Cal.3d [51,] 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].”) (*Ibid.*) The initiatives’ goals “were to protect residents from excessive taxation and government spending.” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61, 233 Cal.Rptr. 38, 729 P.2d 202 (*County of Los Angeles*)).

Section 6 of article XIII B “had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs.” (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 61, 233 Cal.Rptr. 38, 729 P.2d 202; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.4th 4th 749, 758–759, 207 Cal.Rptr.3d 44, 378 P.3d 356 (*Department of Finance*)). Section 6 “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno*, *supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) The provision states “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service....” (Cal. Const., art. XII B, § 6, subd. (a).)

*2 “In 1984, the Legislature enacted a comprehensive statutory and administrative scheme for implementing article XIII B, section 6. ([Gov. Code,¹] § 17500 et seq.; [citations].) In so doing, the Legislature created the Commission ... to resolve questions as to whether a statute imposes ‘state-mandated costs on a local agency within the meaning of section 6.’ ” (*California School Bds. Assn. v.*

State of California (2011) 192 Cal.App.4th 770, 780, 121 Cal.Rptr.3d 696.) The legislation directs “the Commission not to find local government costs reimbursable if, among other things, ‘[t]he statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election’ (ballot measure mandates).” (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1191, 90 Cal.Rptr.3d 501 (*California School Boards*)).

Under this regulatory scheme, when the Legislature enacts a statute imposing obligations on a local agency or a school district without providing additional funding, the local entity may file a test claim with the Commission. (§§ 17551, 17555.) After a public hearing, the Commission must then determine whether the statute requires a new program or increased level of service.² (§§ 17551, 17555.) “If the Commission determines the statute meets this criterion, [it] must determine the cost of the mandated program or service and then notify specified legislative entities and executive officers of this decision. (§§ 17557, 17555.)” (*California School Bds. Assn. v. State of California*, *supra*, 192 Cal.App.4th at p. 781, 121 Cal.Rptr.3d 696.)

Multiple claimants may join together to pursue a test claim, and the Commission’s decision applies statewide to all similarly situated local agencies or school districts. (Cal. Code Regs., tit. 2, § 1183.1.) A test claim is the “exclusive procedure” for claiming and obtaining reimbursement for costs mandated by the state. (§ 17552.) “A local agency or school district may challenge the Commission’s findings by administrative mandate proceedings. (§ 17559; Code Civ. Proc., § 1094.5.)” (*California School Bds. Assn. v. State of California*, *supra*, 192 Cal.App.4th at p. 781, 121 Cal.Rptr.3d 696.)

The statutory scheme implementing article XIII B, section 6 also provided “that if the Legislature identifies a particular mandate in the Budget Act as one for which reimbursement is not provided for that fiscal year, the local agencies are not required to comply with the mandate during that year. [¶] For a number of years, the Legislature chose not to fund certain mandates, but did not identify the mandates in the Budget Act as those for which no reimbursement would be provided. Instead, the Legislature funded the mandates in the token amount of \$1,000. This had the effect of *not* automatically suspending the operation of the mandates, but leaving them virtually unfunded. [Footnote omitted.] Local agencies advanced considerable funds complying with drastically underfunded mandates, with the expectation of ultimately obtaining reimbursement from the state.” (*California School Bds. Assn. v. Brown* (2011) 192 Cal.App.4th 1507,

1512–1513, 122 Cal.Rptr.3d 674.)

*3 This issue led to the passage of Proposition 1A in November 2004, which, “among other things [added] section 6, subdivision (b) to article XIII B. That subdivision provides that, for every fiscal year, ‘for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.’ (Cal. Const., art. XIII B, § 6, subd. (b)(1).) ... Thus, with respect to a reimbursable mandate, for each fiscal year, the Legislature is required to choose to either fully fund the annual payment toward the arrearage or suspend the operation of the mandate.” (*California School Bds. Assn. v. Brown, supra*, 192 Cal.App.4th at pp. 1513–1514, 122 Cal.Rptr.3d 674.)

B. Sexually Violent Predators Act and Initial Test Claim
The SVPA, enacted in 1995, established commitment procedures for the civil detention and treatment of sexually violent predators (SVPs) after the completion of criminal sentences for certain sex-related offenses. (Welf. & Inst. Code, §§ 6600–6608.) The law outlines the qualifications for commitment under the SVPA and specifies the due process protections afforded to the identified offender. If an offender meets the criteria, he or she must undergo an evaluation by the State Department of State Hospitals.³ (Welf. & Inst. Code, § 6600, subd. (a)(3).) Before civil detention and treatment are imposed, the law requires county counsel or a district attorney to file a petition for civil commitment in superior court. (Welf. & Inst. Code, § 6601.) A probable cause hearing (Welf. & Inst. Code, § 6602), followed by a jury trial, is then conducted to determine beyond a reasonable doubt if the person is an SVP. (Welf. & Inst. Code, §§ 6602–6603.) If the person alleged to be an SVP is indigent, the county must provide him or her with the assistance of counsel and experts necessary to prepare a defense to the commitment petition at both the probable cause hearing and trial. (*Ibid.*)

After the SVPA was enacted, the County of Los Angeles brought a test claim seeking reimbursement of the costs incurred by local governments in complying with the duties imposed by the SVPA. On June 25, 1998, the Commission adopted a statement of decision approving reimbursement for those costs. In its decision, the Commission “concluded that the test claim legislation[, identified by the claimants as *Welfare and Institutions Code sections 6250 and 6600 through 6608,*] impose[d] a new program or higher level of

service upon local agencies within the meaning of *article XIII B, section 6, of the California Constitution.*”

The statement of decision specified eight activities the Commission approved for reimbursement and identified the specific Welfare and Institutions Code provisions from which it determined each activity arose: “[(1)] Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).) [¶] [(2)] Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601, subd. (i).) [¶] [(3)] Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601, subd. (i).) [¶] [(4)] Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.) [¶] [(5)] Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 [&] 6604.) [¶] [(6)] Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b)–(d) [&] 6608, subds. (a)–(d).) [¶] [(7)] Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 [&] 6605, subd. (d).) [¶] [(8)] Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)”⁵

*4 The decision denied the test claim with respect to the remaining Welfare and Institutions Code provisions that make up the SVPA, concluding those provisions “do not impose reimbursable state mandated activities upon local agencies.”

C. Subsequent Changes to the SVPA and Proposition 83
On June 30, 2006, the Secretary of State announced that Proposition 83, also known as Jessica’s Law, qualified for the ballot for the November 7, 2006 general election. The intent of the initiative, as set forth in section 2, subdivision (h) of the measure, was to “take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children.” (Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006).) The

focus of the initiative was to amend provisions of the Penal Code to “[i]ncrease[] penalties for violent and habitual sex offenders and child molesters” and to prevent such offenders from residing within close proximity of schools and parks. (*Id.* official title and summary.) The measure also called for lifetime Global Positioning System monitoring of registered felony sex offenders. (*Ibid.*)

With respect to the SVPA, the measure’s introductory language stated that “[e]xisting laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.” (Prop. 83, § 2, subd. (h).) Section 2, subdivision (k) of the initiative stated “California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.” (*Ibid.*)

The proposition proposed changes to three of the SVPA provisions identified by the Commission as a basis for the state-mandated duties. The measure modified [Welfare and Institutions Code section 6604](#) so that SVPs would be committed for an indeterminate term, rather than a two-year term that could be extended with a court order. (Ballot Pamp., Gen. Elec. (Nov. 7, 2006) text of Prop. 83, p. 137 (§ 6604) (hereafter Pamphlet).) The proposition modified [Welfare and Institutions Code section 6605, subdivision \(b\)](#), to require the DMH to deem an SVP’s condition changed before he or she could petition the court for conditional release or unconditional discharge. (Pamphlet, text of Prop. 83, p. 137 (§ 6605).) Before the measure, the statute required annual notice to the person of his or her right to petition and an annual examination of the person’s mental condition by the DMH. (*Ibid.*) Finally, the proposition proposed a minor modification to [Welfare and Institutions Code section 6608](#). The existing provision stated a committed person could petition for “conditional release *and subsequent* unconditional discharge,” and Proposition 83 amended the sentence to state that a committed person could petition for “conditional release *or an* unconditional discharge.” (Pamphlet, text of Prop. 83, p. 138 (§ 6608), italics added.)

*5 The ballot initiative also proposed to amend provisions

of the SVPA that were excluded by the Commission as a basis for the state mandate. The measure expanded the definition of SVP to include persons convicted of a sexually violent offense against only one victim. (Pamphlet, text of Prop. 83, p. 135 (§ 6600, subd. (a)(1)).) Prior to the initiative, the law required the person to be convicted of offenses against two or more victims. (*Ibid.*) The measure also removed the limitation on the number of juvenile adjudications that count as a sexually violent offense (the existing law was limited to one). (Pamphlet, text of Prop. 83, pp. 135-136 (§ 6600, subds. (a)(1) & (g)).) Finally, the measure modified [Welfare and Institutions Code section 6601, subdivision \(k\)](#), so that any parole imposed on a person deemed an SVP runs consecutive to, rather than simultaneously with, a civil commitment. (Pamphlet, text of Prop. 83, p. 137 (§ 6601, subd. (k)).)

Proposition 83 also contained a provision to limit the Legislature’s ability to weaken or repeal any change made by the measure: “The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.” (Pamphlet, text of Prop. 83, p. 138.)

As required by the Election Code, in September 2006 the director of the DOF and the legislative analyst provided a joint letter to the Attorney General outlining the expected changes in revenues and costs associated with Proposition 83.⁶ With respect to the costs specifically related to changes to the SVPA, the analysis stated “the measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to the DMH by [the Department of Corrections and Rehabilitation] for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.”

The analysis noted some of the costs would be offset by the longer prison sentences imposed on persons convicted of sexually violent offenses, but concluded that “the SVP-related provisions of th[e] measure could result in a net increase in state operating costs of at least \$100 million after a few years.” The voter information guide informed

voters that the *state's* costs related to sexually violent predator commitments would likely increase, stating “on balance the operating and capital outlay costs to the state are likely to be substantially greater than the savings.” The material provided to voters did not identify any new costs to be imposed on local governments as a result of the referendum, and contained no indication that costs to local governments subsidized by the state would or could be shifted to local governments as a result of the initiative.

*6 As the initiative was in the process of reaching the ballot, the Legislature was simultaneously working on changes to the laws relating to sex offenders. On January 9, 2006, Senate Bill 1128 was introduced to enact “the Sex Offender Punishment, Control, and Containment Act of 2006, a comprehensive strategy to protect California communities from sex offenders.” (Leg. Counsel’s Dig., Sen. Bill No. 1128 (2005-2006 Reg. Sess.)) The bill was approved by the Legislature on August 31, 2006, as urgency legislation and became effective on September 20, 2006. (Sen. Bill No. 1128 (2005-2006 Reg. Sess.)) The legislation contained some, but not all, of the changes to the SVPA presented in Proposition 83. It did not amend the law to include SVPs who only committed crimes against one victim, or remove the limit on the number of juvenile offenses available to be considered as a basis for a civil commitment. (Sen. Bill No. 1128 (2005-2006 Reg. Sess.) § 53.) Senate Bill No. 1128 did provide for tolling of the term of parole while the SVP was civilly committed and for indeterminate commitments, rather than two-year terms. (*Ibid.*)

On November 7, 2006, the voters approved Proposition 83, which became effective immediately. The initiative overrode the modifications made to the Welfare and Institutions Code by Senate Bill No. 1128.

D. Redetermination of Earlier Test Claim

The year before the passage of Proposition 83, the Legislature amended section 17556 to direct the Commission to “‘set-aside’ some of its test claim decisions and to ‘reconsider’ other test claim decisions. (Legis. Counsel’s Dig., Assem. Bill No. 138 (2005-2006 Reg. Sess.))” (*California School Boards, supra*, 171 Cal.App.4th at p. 1191, 90 Cal.Rptr.3d 501.) In *California School Boards* the court determined that amendment to section 17556 was invalid on the grounds that its direction to the Commission to revisit specific earlier decisions was a violation of the separation of powers doctrine. (*Id.* at pp. 1200–1201, 90 Cal.Rptr.3d 501.) The court held: “[l]ike a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission

decision and command the commission to reconsider.” (*Id.* at p. 1201, 90 Cal.Rptr.3d 501.)

California School Boards did not address whether the Commission had the ability to reconsider a decision on its own, but noted that “[o]ver time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission’s decision. While decisions of the Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances.... In deciding that the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside or reconsidered, we do not imply that there is no way to obtain reconsideration of a Commission decision when the law or material circumstances have changed. We only conclude that the Legislature’s attempt to force a reconsideration in this case violated the separation of powers doctrine. Whether the Commission, exercising inherent powers, may agree to reconsider a decision or the Legislature may provide, generally, a process for obtaining reconsideration of a decision is beyond the scope of this opinion.” (*California School Boards, supra*, 171 Cal.App.4th at pp. 1202–1203, 90 Cal.Rptr.3d 501, fn. omitted.)

In 2010, in response to *California School Boards*, the Legislature enacted section 17570. (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 856 (2009-2010 Reg. Sess.) as amended Oct. 6, 2010, p. 4 [“This bill is responsive to issued raised by a 2009 Third Appellate District Court ruling in *California School Boards Association v. State of California* where the court found the Legislature’s practice of referring mandates back to the Commission for redetermination was unconstitutional. This bill establishes a constitutional process for mandate redetermination.”].) The provision set forth a procedure to reassess an earlier Commission decision when the state’s liability “has been modified based on a subsequent change in law.” (§ 17570, subd. (b).)

*7 Section 17570 defines a “[s]ubsequent change in law” as “a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a ‘subsequent change in law’ does not include the amendments to Section 6 of article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A ‘subsequent change in law’ also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.” (§ 17570.)

Section 17570 also required the Commission to establish a two-step hearing process for revisiting an earlier decision. (§ 17570, subd. (d)(4).) “As the first step, the [C]ommission shall conduct a hearing to determine if the requester has made a showing that the state’s liability pursuant to [subdivision \(a\) of Section 6 of Article XIII B of the California Constitution](#) has been modified based on a subsequent change in law. If the [C]ommission determines that the requester has made this showing, then pursuant to the [C]ommission’s authority in subdivision (b) of this section, the [C]ommission shall notice the request for a hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.” (*Ibid.*)

Regulations adopted by the Commission under section 17570 state the Commission must find “that the requester has made an adequate showing” at the first hearing if “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.” (*Cal. Code Regs., tit. 2, § 1190.5, subd. (a)(1).*) At the second hearing, the Commission determines if the state’s liability has been modified and, if so, “adopt[s] a new decision that reflects the modified liability of the state.” (*Cal. Code Regs., tit. 2, § 1190.5, subd. (b)(1).*)

On January 15, 2013, the DOF filed a request for redetermination of the Commission’s June 25, 1998 statement of decision concerning the SVPA. The request asserted that the passage of Proposition 83 constituted a subsequent change in the law under section 17570. The DOF contended that because “all of the Welfare and Institutions Code sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83,” the costs incurred by local agencies “to comply with the SVP mandate [are] no longer a cost mandated by the state.”

The DOF asserted that because [Welfare and Institutions Code sections 6601, 6604, 6605 and 6608](#) were amended and reenacted by Proposition 83, “the voters reenacted the entirety of those sections, ‘including the portions not amended,’ and therefore the test claim statutes impose duties expressly included in the voter-enacted ballot measure.” The DOF further asserted that “ ‘the remainder of the mandate’s Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure.’ ” The Counties of Los Angeles and San Bernardino, the California District Attorneys Association, the California State Associate of Counties, the California Public Defenders’ Association, and several local prosecutors and

public defenders opposed the DOF’s request for redetermination.

The opposing agencies and associations argued (1) Proposition 83 did not substantively change any of the statutes that implemented the civil commitment program; (2) the definition of a change in law contained in section 17570 was unconstitutionally vague and violated the separation of powers doctrine; and (3) the DOF was estopped from obtaining a redetermination of the 1998 decision because the ballot materials for Proposition 83 represented that there would be no change in costs to local governments and the DOF had represented to the Attorney General in its analysis of the ballot measure that the costs of the SVP program would remain reimbursable by the state. On July 26, 2013, the Commission adopted its statement of decision rejecting all of the objections to the DOF’s request and concluding the DOF had adequately shown the state’s liability had been modified by Proposition 83.

*8 The Commission reasoned that “[t]he analysis of whether a subsequent change in the law has occurred turns on whether, under section 17556 [, subdivision] (f), there are now any costs mandated by the state, where a ballot measure expressly includes some of the same activities as the test claim statutes that were found to impose a reimbursable mandate in [the Commission’s 1998 test claim decision] CSM-4509.” The Commission then found the DOF had made an adequate showing that it had a substantial possibility of prevailing at the second hearing because “the test claim statutes impose duties that are expressly included in a voter-enacted ballot-measure.”

After receiving additional written comments opposing the DOF’s request, and the DOF’s responses to those comments, and after two days of public hearings, on December 6, 2013, the Commission issued a final statement of decision granting the DOF’s request for redetermination and *partially* approving the DOF’s request to end reimbursement for the activities identified in the 1998 test claim decision. The Commission again rejected the comments of the constituents who opposed the DOF’s petition and found that with two exceptions, the activities previously found to be reimbursable state-mandated costs were no longer reimbursable state mandates. It concluded that the costs of “[p]reparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing” and “[t]ransportation for each potential sexually violent predator from a secured facility to the probable cause hearing” were neither expressly included in Proposition 83 nor necessary to implement the measure and, therefore, remained state-mandated under [Welfare and Institutions Code section](#)

6602 and reimbursable.

On February 28, 2014, the Counties filed a petition for writ of administrative mandamus and complaint for declaratory relief under sections 17514 and 17559, subdivision (b) and [Code of Civil Procedure sections 1094.5 and 1060](#) in San Diego County Superior Court against the Commission, the State of California, the DOF, and John Chiang in his official capacity as the California State Controller.⁷ The Counties sought an order finding (1) the Commission’s July 26, 2013 and December 6, 2013 statements of decision were not supported by substantial evidence and (2) sections 17556, subdivision (f) and 17570 are unconstitutional and, therefore, could not serve as a basis for the Commission’s redetermination of its 1998 statement of decision.⁸ After briefing and a hearing, on April 24, 2015, the trial court denied the Counties’ requested relief and judgment was entered against them on May 12, 2015.

The trial court’s order concluded that the definition of “subsequent change in the law” found in section 17570 did not conflict with [article XIII B, section 6](#) because the language of the provision “comports with how state-mandated and voter-approved mandates are funded.” The court, referring to [article XIII B, section 6](#), subdivision (b), reasoned that Proposition 83 constituted a subsequent change in the law because it “changed the funding dynamic of the SVP Act” by eliminating the Governor’s ability to defund the mandate “through [his] line item veto power.” The court further stated, “even if Prop 83 is construed as a simple reenactment, the effect of voter-approval cannot be ignored as transforming certain requirements of the Act into voter-approved mandates.”

DISCUSSION

^{*9} On appeal, the Counties assert the Commission and the trial court erred in concluding that Proposition 83 constituted a subsequent change in the law that absolved the state of part of its funding liability for the civil commitment procedures created by the SVPA. The Counties also assert that the Commission’s interpretation of the phrase “subsequent change in the law” in section 17570 conflicts with the intent and purpose of [article XIII B, section 6](#), subdivision (a) and is unconstitutionally overbroad.

The Commission and the state respond that because Proposition 83 was approved by the voters and the initiative modified some of the statutory provisions that formed the basis for the Commission’s 1998 statement of decision, the Commission and the trial court correctly

found that the source of the mandated costs was now the People, and not the Legislature. They assert section 17570 does not conflict with [article XIII B, section 6](#) precisely because Proposition 83 changed the character of the mandate. The Attorney General also contends the statute is not unconstitutionally overbroad because section 17570 contains a clear definition of the phrase “subsequent change in the law” and references the “definable sources” of sections 17514 and 17556.

^[1] Whether Proposition 83 negated part of the state mandate found by the Commission in 1998 is subject to our independent review. It is a purely a legal question requiring no reliance on disputed facts. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1195, 75 Cal.Rptr.2d 754; see *Department of Finance, supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356 [“The question whether a statute or executive order imposes a mandate is a question of law.”].) As we explain, we reverse the decision of the trial court and hold that the Commission incorrectly interpreted sections 17556, subdivision (f) and 17570 to find there had been a subsequent change in the law that diminished the state’s liability for the costs identified by the Commission in its 1998 statement of decision.

I

“In construing any statute, ‘[w]ell-established rules of statutory construction require us to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.’ [Citation.] ‘We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.’ [Citation.] If the statutory language is unambiguous, ‘we presume the Legislature meant what it said, and the plain meaning of the statute governs.’ ” (*Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484–485, 17 Cal.Rptr.3d 88.)

“If, however, the statutory language is ambiguous or reasonably susceptible to more than one interpretation, we will ‘examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes,’ and we can ‘ “look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the

legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’ ” ‘ ” (*Pacific Sunwear of California, Inc. v. Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th 466, 474, 84 Cal.Rptr.3d 182.)

“ ‘ “We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” [Citation.]’ [Citation.] Further, ‘We presume that the [enacting legislative body], when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules. [Citation.]’ ” (*Doe v. Brown* (2009) 177 Cal.App.4th 408, 417–418, 99 Cal.Rptr.3d 209.)

*10 ^[2] ^[3] Additionally, “[i]f ‘the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution.’ [Citations.] Consequently, ‘[i]f feasible within bounds set by their words and purposes, statutes should be construed to preserve their constitutionality.’ ” (*Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 186, 185 Cal.Rptr. 260, 649 P.2d 902.) “There are limits, however, to the ability of a court to save a statute through judicial construction;” the court may not “ ‘ “in the exercise of its power to interpret, rewrite the statute.” ’ ” (*Id.* at p. 187, 185 Cal.Rptr. 260, 649 P.2d 902.)

II

The relevant constitutional and statutory provisions are set forth in the background section, but merit repeating. Under [article XIII B, section 6, subdivision \(a\) of the California Constitution](#), “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...” (*Cal. Const., art. XIII B, § 6, subd. (a).*) Section 17514 defines “Costs mandated by the state” as “any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [s]ection 6 of [a]rticle XIII B of the California Constitution.”

Under section 17556, subdivision (f), statutes that “impose[] duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election” are excluded from the subvention requirement contained in [article XIII B, section 6](#), subd. (a). (§ 17556, subd. (f), italics added.) This exemption for duties imposed by a ballot initiative applies “regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.” (*Ibid.*)

Section 17570, subdivision (b) allows the Commission to “adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision pursuant to [subdivision \(a\) of Section 6 of Article XIII B of the California Constitution](#) has been modified based on a subsequent change in law.” (§ 17570, subd. (b).) A “subsequent change in law” is defined as “a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556....” (§ 17570, subd. (a)(2).)

III

^[4]The question we must answer is whether Proposition 83 converted the duties imposed on the Counties by the SVPA, and that the Commission previously determined were state-mandated, into duties that are instead mandated by the People. As the Attorney General states: “The source of authority that mandates the program or service determines whether the reimbursement requirement under [\[article XIII B, section 6, subdivision \(a\)\]](#) applies.” (Italics omitted.) Sections 17556 and 17570 do not easily answer this novel question. We conclude, however, that the interpretation of section 17556, subdivision (f) adopted by the Commission and the trial court is too broad. We adopt a narrow construction of sections 17556, subdivision (f) and 17570 and hold that a ballot initiative that modifies statutes previously found to impose a state mandate only changes the source of the mandate if the initiative changes the duties imposed by the statutes. Under this narrow construction, the source of the SVPA mandate remains the state and the six duties at issue are subject to the Constitution’s subvention requirement.

A

*11 The Commission may revisit an earlier test claim decision if the state’s liability for that decision has been modified because of a “subsequent change in law.” (§ 17570, subd. (b).) The definition of “subsequent change in law” contained in section 17570, subdivision (a), circularly, refers to sections 17514 and 17556. Sections 17514 and 17556 in turn define, respectively, what constitutes a state-mandated program and what does not. These statutes, however, do not explicitly address how the source of the mandate should be characterized when a statutory provision previously found to impose a state mandate is amended by a ballot initiative. Because the provisions are ambiguous in this regard, we are tasked with adopting a statutory construction that “harmonizes the statute[s] internally and with related statutes” and that preserves the constitutionality of the statutes. (*City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 195, 158 Cal.Rptr.3d 409; *Metromedia, Inc. v. City of San Diego*, *supra*, 32 Cal.3d at pp. 186–187, 185 Cal.Rptr. 260, 649 P.2d 902.)

^[5]Although Proposition 83 amended the SVPA, the measure did not change any of the duties the law imposed on the Counties and that the Commission found were state-mandated. As set forth above, the 1998 statement of decision identified eight duties mandated by the SVPA that imposed costs on the Counties. Those duties can be described as providing legal representation and mental health expertise for both the county and the alleged SVP in commitment proceedings, and providing housing and transportation for the alleged SVP leading up to and during those proceedings. The Commission identified the specific Welfare and Institution Code provisions it determined were the basis for these activities and denied the test claim with respect to the “remaining provisions of the test claim legislation because [those remaining provisions] do not impose **reimbursable** state mandated activities upon local agencies.”

As discussed, just three of the Welfare and Institution Code provisions the Commission identified as forming the basis for the state-mandated activities were modified by Proposition 83.⁹ Although the initiative made changes to these statutes, critically to our interpretation of section 17556, subdivision (f), the changes were not to the state-mandated duties. Proposition 83 amended [Welfare and Institutions Code section 6604](#) to extend the term of commitment from two years to an indeterminate term.¹⁰ This provision was identified in the 1998 statement of decision, along with [Welfare and Institutions Code section 6603](#),¹¹ as the basis for the Counties’ obligation to designate their own counsel and counsel for indigent offenders to prepare for and attend trial on an SVP petition. Proposition 83 amended [Welfare and Institutions Code section 6605](#),

[subdivision \(b\)](#), to require the DMH to deem an SVP’s condition changed before he or she is permitted to petition for release, and amended [Welfare and Institutions Code section 6608, subdivision \(a\)](#), to state that a committed person may petition for a “conditional release *or* an unconditional discharge without the recommendation or concurrence of the Director of Mental Health.”¹² (Pamphlet, text of Prop. 83, pp. 137, 138 (§§ 6605, 6608).) The 1998 statement of decision identified these two subdivisions ([Welf. & Inst. Code, §§ 6605, subd. \(b\) and 6608, subd. \(a\)](#)), along with subdivision (c) and former subdivision (d) of [Welfare and Institutions Code section 6605 and subdivisions \(b\) through \(d\) of Welfare and Institutions Code section 6608](#), as the basis for the duty of county and indigent defense counsel to prepare for and attend “subsequent hearings regarding the condition of the” SVP.

*12 The first change, extending the term of commitment under [section 6604](#), did not impact the duty the Commission found was imposed by [Welfare and Institutions Code sections 6603 and 6604](#) in its 1998 statement of decision. The duty, “preparation and attendance by the county’s designated counsel and indigent defense counsel at trial,” exists regardless of the term of commitment the SVP faces and, therefore, remained the same after Proposition 83 was passed. Likewise, the changes to [Welfare and Institutions Code sections 6605, subdivision \(b\) and 6608, subdivision \(a\)](#) did not alter the duties those provisions imposed on local governments. Those duties, “[p]reparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator,” remained the same after the passage of Proposition 83.

Because the duties imposed by the statutes at issue were not affected by Proposition 83, we reject the Commission’s conclusion that the duties are “necessary to implement or expressly included” the measure, and hold that the exclusion contained in section 17556, subdivision (f), does not apply. As the Attorney General states: “The relevant question in a mandates determination is whether, in the absence of a statutory provision that requires the duties at issue, local agencies would nevertheless have to perform the duties at issue” because of the existence of the ballot measure. In this case, in the absence of Proposition 83, local agencies would still be required to perform the duties as mandated by the SVPA. The opposite is not true. In the absence of the SVPA, as enacted by the Legislature, the specific duties at issue would not exist.

Our conclusion is supported by the California Supreme Court’s decision in

Commission on State Mandates (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*), which addressed questions about the source of a mandate analogous to those presented here. In *San Diego Unified* the Commission and the courts were tasked with determining if certain procedural safeguards required for public schools in expulsion proceedings were mandated by state law or federal law. Like duties mandated by a ballot initiative, section 17556 also excludes costs mandated by federal law from the subvention requirement of [article XIII B, section 6](#), subdivision (a). (§ 17556, subd. (c).) The Education Code provisions at issue in *San Diego Unified* provided for specific procedural protections when a school principal recommended expulsion at his or her discretion, and when a school principal was *required* to recommend expulsion because a student brought a firearm to school. (Ed. Code, §§ 48915, 48918.)

San Diego Unified held that the costs of the procedural protections afforded under the Education Code for mandatory expulsion for bringing a firearm to school were state-mandated, while those for discretionary expulsion were federally-mandated and, therefore, excluded from state subvention. (*San Diego Unified, supra*, 33 Cal.4th at p. 880, 884, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The *San Diego Unified* court reasoned that with respect to discretionary expulsion, the procedural protections contained in [Education Code sections 48915 and 48918](#) were “designed to make the [student’s] underlying *federal right* enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights....” (*San Diego Unified, at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589*, italics added.) The costs associated with affording those protections, therefore, were federally mandated and fell within the exclusion to the subvention requirement found in section 17556, subdivision (c). (*San Diego Unified, at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589*.)

The court concluded that the procedural protections afforded for mandatory expulsion proceedings, in contrast, were state-mandated and not subject to the exclusion found in section 17556, subdivision (c). (*San Diego Unified, supra*, 33 Cal.4th at p. 880, 16 Cal.Rptr.3d 466, 94 P.3d 589.) At the time the case was decided, only California’s statutes, and not federal law, required “an expulsion recommendation—or expulsion—for firearm possession” by a public school student. (*Id. at p. 881, 16 Cal.Rptr.3d 466, 94 P.3d 589*.) The costs associated with such proceedings, therefore, were not subject to section 17556’s exclusion: “[I]n its mandatory aspect, [Education Code section 48915](#) appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials [as in a discretionary expulsion proceeding],

has made the decision requiring a school district to incur the costs of an expulsion hearing.” (*San Diego Unified, at p. 880, 16 Cal.Rptr.3d 466, 94 P.3d 589*.)

*13 Here, the duties and costs at issue did not arise from Proposition 83. Unlike the federal due process protections afforded in a discretionary expulsion considered in *San Diego Unified*, the duties at issue here arose from the creation of the SVPA by the Legislature in 1995, not from Proposition 83’s modifications to that law. The subsequent amendment of some of the provisions contained in the SVPA did not alter the source of the mandate in the way advanced by the defendants. Indeed, the provision providing explicitly for the right to a jury trial, the assistance of counsel and the right to retain experts, [Welfare and Institutions Code section 6603](#), was not amended at all by Proposition 83. Without the initial enactment of the SVPA by the Legislature, it is conjecture to conclude, as the Attorney General does, that “local agencies would nevertheless have to perform the duties at issue.”¹³

^[6]The Attorney General and the Commission also contend that Proposition 83 constituted a subsequent change in the law that modified the state’s liability because the initiative broadened the definition of SVP contained in [Welfare and Institutions Code section 6600](#) and because the measure’s “amendment clause” prohibits the Legislature from weakening the parts of the code the measure amended. The Commission’s 1998 decision, however, concluded that [Welfare and Institutions Code section 6600](#) was not a basis for any of the duties for which the Counties sought reimbursement.¹⁴ Likewise, the initiative’s amendment clause did not impact any of the duties imposed by the SVPA or change the source of the mandated duties.¹⁵

B

The Commission and the trial court concluded *any* modification by ballot initiative to a statute that supports what has previously been adjudged a state mandate converts the source of the mandate from one imposed by the Legislature to one imposed by the People. This construction of sections 17570 and 17756, subdivision (f) does not align with the purpose and policy of this state’s mandate law. As discussed, [article XIII B, section 6](#), subdivision (a) was enacted “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” (

of California, *supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Defining a “subsequent change in the law” to include *any* modification to a state-mandated program by ballot initiative, as the Commission did, and not limiting the provisions to those modifications that change the duties imposed on local governments (or that impose new duties) directly conflicts with this constitutional dictate.

*14 Further, that interpretation leads to an absurd result, allowing the state to avoid the subvention requirement by advancing propositions that reenact without changing or that only marginally modify existing laws. This broad interpretation of the definition of “subsequent change in the law” under sections 17556, subdivision (f) and 17570 would allow the state to avoid its constitutional obligation to fund the costs it has placed on local governments, which are limited in their ability to raise funds by article XIII A. (*Department of Finance, supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356; *County of Los Angeles, supra*, 43 Cal.3d at p. 61, 233 Cal.Rptr. 38, 729 P.2d 202.)

Our narrow interpretation of these Government Code provisions is also supported by the “reenactment rule” advanced by the Counties. Under the Constitution, “[a] section of a statute may not be amended unless the section is re-enacted as amended.” (Cal. Const., art. IV, § 9.) A ballot initiative, therefore, must restate the entire provision it proposes to amend. Section 9605 further provides, “[w]here a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment.” (§ 9605.)

[7]The purposes of this “reenactment rule” is to “is to avoid ‘the enactment of statutes in terms so blind that [the legislative body is] deceived in regard to their effect, and the public, from the difficulty of making the necessary examination and comparison, fail[s] to become [apprised] of the changes made in the laws.’” (*American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748, 59 Cal.Rptr.2d 428.) Under the rule, it is the *actual changes* made by Proposition 83 that are relevant to the inquiry of whether the initiative changed the source of the mandate. To the extent that the Welfare and Institutions Code provisions were restated by the initiative to comply with the restatement rule, those restatements are not relevant. (See *In re Oluwa* (1989) 207 Cal.App.3d 439, 446, 255 Cal.Rptr. 35 [“amendment of a portion of a statute has no effect on portions which remain unchanged”]; *County of*

Sacramento v. Pfund (1913) 165 Cal. 84, 88, 130 P. 1041 [“to construe a statute amended in certain particulars as having been wholly reenacted as of the date of the amendment, is to do violence to the code and all canons of construction”].)

To refute this point, the Attorney General relies on a footnote in *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 9 Cal.Rptr.2d 102, 831 P.2d 327 and asserts the Supreme Court held that although the effective date of an unchanged, but reenacted statute, remains the same, the statute is reenacted for purposes of a mandate determination. *Yoshisato*, however, addressed whether changes to the same Penal Code statute by two ballot initiatives simultaneously passed were both effective. (*Id.* at p. 981, 9 Cal.Rptr.2d 102, 831 P.2d 327.) The People argued section 9605 supported their position that the initiative that garnered the most votes was competing against the other initiative directly and, therefore, only the initiative with the most votes was operative. (*Yoshisato*, at p. 989, 9 Cal.Rptr.2d 102, 831 P.2d 327.)

The Supreme Court rejected this assertion and held that “when a statute is ‘reenacted’ under the compulsion of the Constitution” the reenactment does not, “in and of itself, reflect intent of the voters to adopt ‘comprehensive scheme’ that would prevail over all other provisions of any other measure enacted by a lesser affirmative vote at the same election.” (*Yoshisato v. Superior Court, supra*, 2 Cal.4th at p. 990, 9 Cal.Rptr.2d 102, 831 P.2d 327.) *Yoshisato* does not, as the Attorney General contends, address the question of whether a technical reenactment required by section 9605, without any change from existing law, changes the source of a mandate.

*15 Finally, the conclusion we reach is also supported by the fact that the initiative did not purport to remove the state’s liability for costs it was required to reimburse to counties under the 1998 statement of decision. The parties agree that the statutory mechanism for the state to request a reevaluation of the 1998 determination, created by section 17570 in 2010, was not yet in place at the time the initiative was presented to voters. The exclusion contained in section 17556, subdivision (f), however, was part of the statute as it was originally enacted in 1984. (Stats. 1984, ch. 1459, § 1, p. 5119.) There was no barrier for the state to challenge its subvention obligation under [article XIII B, section 6](#), subdivision (a), following the passage of Proposition 83. Further, if the proponents of a ballot initiative that amends the statutory provisions that are the basis for an existing state mandate propose to also eliminate the state’s liability for the program, the ballot measure can easily indicate this intent.

C

In its order denying the petition, the trial court stated that Proposition 83 constituted a “subsequent change in the law” because “voter approval” of the initiative “changed the funding dynamic of the SVP Act.” The court explained: “The state is required to reimburse local agencies for state-imposed mandates” but “[v]oter-approved mandates are not subject to defunding through the Governor’s line item veto power. [Citation.] Thus, through this voter-approved mandate procedure of re-enacting the SVP Act, the Act cannot be defunded by the State.” This, according to the order, “constitutes a subsequent change in law.” The Attorney General reiterates this point on appeal, contending that because “the six duties are now voter-imposed duties through voter approval of Proposition 83, no funding decision by the Legislature (either to fund or not fund) or the Governor (either to exercise his line-item veto power or not) can suspend operation of the duties.”

[8] [9]The trial court’s conclusion, however, puts the cart before the horse. Article XIII B, section 6, subdivision (b), adopted in 2004, requires the Legislature to either appropriate funds for a program that the Commission has determined is state-mandated under section 6, subdivision (a), or suspend the operation of the mandate for the year for which it does not provide funding. (Cal. Const., art. XIII B, § 6, subd. (b)(1).) The trial court and the Attorney General correctly point out that if the source of a mandate is a ballot initiative, and not state legislation, this constitutional requirement does not apply. The Commission’s determination of whether or not a program is state-mandated controls the application of section 6, subdivision (b). Contrary to the trial court’s finding, the suspend-or-fund requirement does not impact the Commission’s

determination as to whether a program is state-mandated or mandated by the People through a ballot initiative.

[10]As the Commission acknowledges, “the Legislature’s ability ... to suspend a state-mandate by defunding the program is not an element indicating whether a voter-enacted ballot measure constitutes a subsequent change in law.... Rather, the requirement to fund or suspend a mandated program under article XIII B, section 6[, subdivision] (b) [results from] the Commission’s finding in a prior year that the program at issue constitutes a reimbursable state-mandated program.”

DISPOSITION

The judgment is reversed. The trial court is directed to modify its judgment to issue a writ of mandate directing the Commission to set aside the decisions challenged in this action and to reconsider the test claim in a manner consistent with this opinion.

WE CONCUR:

McCONNELL, P.J.

NARES, J.

All Citations

--- Cal.Rptr.3d ----, 7 Cal.App.5th 12, 2016 WL 7448783, 2016 Daily Journal D.A.R. 12,713

Footnotes

- 1 All statutory references are to the Government Code unless otherwise specified.
- 2 The Commission is a quasi-judicial body and is composed of seven members: The controller; the treasurer; the director of the Department of Finance; the director of the Office of Planning and Research; a member of the public with experience in public finance; and two members appointed by the Governor who serve as city council members, members of a county or city and county board of supervisors, or governing board members of a school district. (Gov. Code, §§ 17525, 17551.)
- 3 At the time the SVPA was enacted this responsibility was administered by the Department of Mental Health (DMH). In 2012 the Legislature established the State Department of State Hospitals and moved responsibility for the evaluation, care, treatment and education of SVPs from the DMH to the new State Department of State Hospitals. (Legis. Counsel's Dig., Assem. Bill No. 1470 (2011-2012 Reg. Sess.).)
- 4 The statement of decision identified subdivision (j), but all parties agree the reference was a typographical error and the decision intended to refer to subdivision (i) of Welfare and Institutions Code section 6601.

- 5 In their opening brief, the Counties state that since the adoption of the test claim decision counties have submitted claims and been reimbursed in excess of \$186 million for performing these activities. The state provided \$20,754,301 from its general fund in fiscal year 2012-2013 for SVPA reimbursements and the Governor's Budget estimated \$21,792,000 for the 2013-2014 fiscal year.
- 6 The Elections Code requires the Attorney General to "prepare a circulating title and summary of the chief purposes and points of [a] proposed measure" ([Elec. Code, § 9004, subd. \(a\)](#)) that includes "in boldface print ... either the estimate of the amount of any increase or decrease in revenues or costs to the state or local government, or an opinion as to whether or not a substantial net change in state or local finances would result if the proposed initiative is adopted." ([Elec. Code, § 9005, subd. \(a\)](#).) The estimate or opinion is made "jointly by the Department of Finance and the Legislative Analyst," who may rely on the statement of fiscal impact prepared by the legislative analyst under section 12172, subdivision (b). ([Elec. Code, § 9005, subd. \(b\)](#).)
- 7 The Commission answered the petition on its own behalf and the Attorney General answered the petition on behalf of the State of California, the DOF, and the Controller.
- 8 The Counties also separately asserted there was no subsequent change in the law with respect to a small number of cases in Los Angeles County that are by stipulation not subject to Proposition 83. The Counties do not appeal the trial court's ruling with respect to these cases.
- 9 The defendants include a fourth relevant statute, [section 6601](#), as being amended by Proposition 83. That amendment, however, did not change subdivision (i), which the Commission found was a basis for the duties of (1) designating counsel for the county, (2) initial review of the DMH's commitment recommendation by county counsel, and (3) preparation and filing of the commitment petition. Subdivision (i) provides, "If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article." Proposition 83 amended only subdivision (k) of [Welfare and Institutions Code section 6601](#) to require parole be tolled and not run consecutively with an SVP commitment.
- 10 [Welfare and Institutions Code section 6604](#) now provides: "The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of State Hospitals for appropriate treatment and confinement in a secure facility designated by the Director of State Hospitals. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation." ([Welf. & Inst. Code, § 6604](#).)
- 11 [Welfare and Institutions Code section 6603](#) was not modified by Proposition 83. It provides explicit statutory authority for the alleged SVP's right to counsel, right to a jury trial, and right to a unanimous verdict that commitment is warranted if the petition is tried to a jury. ([Welf. & Inst. Code, § 6603, subs. \(a\)-\(b\), \(f\)](#).) It also gives the attorney petitioning for commitment the right to request an updated evaluation of the offender or a replacement evaluation if the original evaluator is not available to testify at trial, and authorizes either party to request the court issue a subpoena for the records reviewed by the person who conducts an evaluation. ([Welf. & Inst. Code, § 6603, subs. \(c\), \(i\)-\(j\)](#).)
- 12 [Welfare and Institutions Code section 6605, subdivision \(b\)](#), has been modified since the passage of Proposition 83. Before the ballot initiative was passed, subdivision (b) of the statute required the director of the DMH to provide a committed person with annual notice of his or her right to petition the court for release. Proposition 83 removed this requirement and instead authorized the DMH to authorize the person to petition the court for conditional release or an unconditional discharge if it determined the person's condition changed so that he or she no longer meets the definition of an SVP. The proposition did not, however, change [Welfare and Institutions Code section 6608](#), which allowed an SVP to petition for release even if he or she is not provided authorization from the DMH. (Pamphlet, text of Prop. 83, p. 138 (§ 6608).) The statute was amended by Senate Bill No. 295 in 2013 to clarify which procedures must be used when a committed person petitions for unconditional release, or when a committed person petitions for conditional release. Senate Bill 295 also shifted the burden of proof from the committed person to the state when the State Department of Hospital's annual evaluation indicates that conditional release to a less restrictive alternative is in the best interests of the person and that conditions can be imposed to adequately protect the community. (Sen. Bill No. 295 (2013-2014 Reg.

Sess.) § 2.)

- 13 The Commission's rejection of the DOF's request for redetermination with respect to the costs associated with the probable cause hearing illustrates the point. The two duties related to probable cause hearings were excluded from the Commission's decision because Proposition 83 makes no reference to such hearings. All of the identified duties, however, are required under the SVPA regardless of the changes made by the ballot initiative.
- 14 In its opposition to the Counties' petition, the Attorney General asserted that Proposition 83 "dramatically extended the reach of the SVPA by expanding the definition of a 'sexually violent predator' and lifting the ceiling on the number of juvenile adjudications that could count as a sexually violent offense." In support of this assertion, the Attorney General cited a 2012 report issued by the California Department of Mental Health as required by [Welfare and Institutions Code section 6601, subdivision \(m\)](#), which stated the number of referrals received by the Department of Corrections increased " 'nearly 800 percent' " after the passage of Proposition 83 and Senate Bill No. 1128. The Counties contend the trial court abused its discretion by granting the Attorney General's request for judicial notice of this report. We agree with the Attorney General that even if the court did err in granting its request for judicial notice, the error was not prejudicial. In addition, the report does not provide any evidence concerning the impact, if any, that Proposition 83 and Senate Bill No. 1128 had on *counties'* SVP commitment duties.
- 15 The Attorney General argues the "Amendment Clause may have been prompted by legislative proposals that, if enacted, would have conflicted with the expanded provisions of Proposition 83" and cites to an analysis by the Senate Commission on Public Safety prepared for a hearing on Senate Bill No. 1128. The analysis, however, does not imply that any member of the Legislature did not support expanding the definition of an SVP as the Attorney General suggests. It merely contains counterarguments to the changes proposed by the bill.

18 Cal.App.5th 661
Court of Appeal,
Third District, California.

DEPARTMENT OF FINANCE et
al., Plaintiffs and Respondents,

v.

COMMISSION ON STATE MANDATES, Defendant;
County of San Diego et al., Real
Parties in Interest and Appellants.

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Synopsis

Background: State petitioned for writ of administrative mandate, asserting that Commission on State Mandates erred in ruling that conditions imposed on a federal and state storm water permit held by municipal government permittees were state, and not federal, mandates. The Superior Court, Sacramento County, No. 34-2010-80000604-CU-WM-GDS, Allen Sumner, J., granted petition in part. Permittees appealed.

Holdings: The Court of Appeal, [Nicholson, J.](#), held that:

[1] provision of Clean Water Act granting regional water quality board discretion to meet “maximum extent practicable” standard in providing for pollutant reduction in storm water permits was not a federal mandate, and thus permittees were required to be reimbursed for cost of meeting permit condition requiring reduction of pollutants to maximum extent practicable, and

[2] Environmental Protection Agency (EPA) regulation requiring storm water permittees to describe, in permit application, practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems was also not a federal mandate.

Reversed and remanded.

West Headnotes (9)

[1] States

➔ Exercise of supreme executive authority

Statutes

➔ Questions of law or fact

The question whether a statute or executive order imposes a mandate is a question of law.

[Cases that cite this headnote](#)

[2] Environmental Law

➔ Discharge of pollutants

Provision of Clean Water Act granting regional water quality board discretion to meet “maximum extent practicable” standard in providing for pollutant reduction in storm water permits was not a federal mandate, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring reduction of pollutants to “maximum extent practicable”; regulation vested board with discretion to choose how permittees were to meet the standard at issue, and exercise of that discretion resulted in imposition of state mandate. [Cal. Const. art. XIII B, § 6](#); [Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342\(p\)\(3\)\(B\)\(iii\)](#); [Cal. Gov't Code § 17556\(c\)](#).

[Cases that cite this headnote](#)

[3] States

➔ State expenses and charges and statutory liabilities

To be a “federal mandate” that would trigger exception to state constitutional subvention provision's requirement for reimbursement of local government for cost of increased program or service requirements, the federal law or regulation must expressly or explicitly require the condition imposed in the permit. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code § 17556\(c\)](#).

[Cases that cite this headnote](#)

[4] Environmental Law

 [Discharge of pollutants](#)

Federal Environmental Protection Agency (EPA) regulation requiring storm water permittees to describe, in permit application, practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems was not a federal mandate for street sweeping and cleaning of storm sewer systems, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring street sweeping and cleaning of storm sewer system, where EPA regulation did not expressly require the scope and detail of street sweeping and facility maintenance that permit imposed. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code § 17556\(c\)](#); [40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(A\)\(3\)](#).

[Cases that cite this headnote](#)

[5] Environmental Law

 [Discharge of pollutants](#)

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applicants to describe procedures for developing and enforcing controls to reduce discharge of pollutants which received discharges from areas of new development and significant redevelopment was not a federal mandate for storm water permittees to develop a hydromodification plan, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring development of hydromodification plan; regulation did not require a hydromodification plan nor restrict regional water quality board from exercising its discretion to require a specific type of plan.

[Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code § 17556\(c\)](#); [40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(A\)\(2\)](#).

[Cases that cite this headnote](#)

[6] Environmental Law

 [Discharge of pollutants](#)

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applicants to describe procedures for developing and enforcing controls to reduce discharge of pollutants which received discharges from areas of new development and significant redevelopment was not a federal mandate for storm water permittees to implement particular low impact development requirements, and therefore, under state constitution's subvention provision, reimbursement of local government permittees was required for cost of storm water permit condition requiring implementation of specified low impact development management practices; nothing in regulation required regional water quality board to impose specific requirements at issue. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code § 17556\(c\)](#); [40 C.F.R. § 122.26\(d\)\(2\)\(iv\)\(A\)\(2\)](#).

[1 Cases that cite this headnote](#)

[7] Environmental Law

 [Discharge of pollutants](#)

Federal Environmental Protection Agency (EPA) regulations requiring storm water permit applicants to describe various proposed educational programs in permit application was not a federal mandate for particular educational requirements imposed by permit granted to municipal government permittees, and therefore, under state constitution's subvention provision, permittees were required to be reimbursed for cost of such educational requirements; educational program and list of topics required by permit, including use of all media as appropriate to measurably increase impacts of urban runoff and best management practices, surpassed what federal regulations

required. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. §§ 122.26(d)(2)(iv)(A)(6), 122.26(d)(2)(iv)(A)(6), (B)(6), (D)(4), 122.26(d)(2)(iv)(B)(6), 122.26(d)(2)(iv)(D)(4).

Cases that cite this headnote

[8] Environmental Law

🔑 Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation allowing storm water permit applicants to propose a management program that imposed controls beyond a single jurisdiction was not a federal mandate for storm water permittees to implement regional and watershed urban runoff management programs, and therefore, under state constitution's subvention provision, local government permittees were required to be reimbursed for cost of such programs when programs were required by permit; regulation merely gave regional water quality board the discretion to require controls on a systemwide, watershed, or jurisdictional basis. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(iv).

Cases that cite this headnote

[9] Environmental Law

🔑 Discharge of pollutants

Federal Environmental Protection Agency (EPA) regulation requiring storm water permit applications to show that applicant had legal authority to control, through interagency agreements, the contribution of pollutants to a different jurisdiction was not a federal mandate for permittees to collaborate or to execute an agreement that established a management structure, and therefore, under state constitution's subvention provision, local government permittees were required to be reimbursed for cost of permit requirements to execute such an agreement; regulation required regional water quality board to assure itself that permittees had authority to address runoff pollution regionally, but it did

not require board to define how permittees would organize themselves to do so. Cal. Const. art. XIII B, § 6; Cal. Gov't Code § 17556(c); 40 C.F.R. § 122.26(d)(2)(i)(D).

See 9 Witkin, Summary of Cal. Law (11th ed. 2017) Taxation, § 119 et seq.

Cases that cite this headnote

****849** APPEAL from a judgment of the Superior Court of Sacramento County, [Allen Sumner](#), Judge. Reversed with directions. (**Super. Ct. No. 34-2010-80000604-CU-WM-GDS**)

Attorneys and Law Firms

[Thomas E. Montgomery](#), County Counsel, [Timothy M. Barry](#), Chief Deputy, [James R. O'Day](#), Senior Deputy, Office of the County Counsel, County of San Diego; Best Best & Krieger, [Shawn Hagerty](#); and Lounsbery Ferguson Altona & Peak, [Helen Holmes Peak](#), San Diego for Real Parties in Interest and Appellants.

[Shanda M. Beltran](#), Irvine and Andrew W. Henderson for Building Industry Legal Defense Foundation as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Somach Simmons & Dunn, [Theresa A. Dunham](#), and [Nicholas A. Jacobs](#), Sacramento for the California Stormwater Quality Association as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Morrison & Foerster and [Robert L. Falk](#), San Francisco for Santa Clara Valley Urban Runoff Pollution Prevention Program as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

[Pamela J. Walls](#), County Counsel, [Karin Watts-Bazan](#), Principal Deputy County Counsel, Office of the County Counsel, County of Riverside, for Riverside County Flood Control and Water Conservation District and County of Riverside as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Meyers Nave Riback Silver & Watson and [Gregory J. Newmark](#), Los Angeles for Alameda Countywide Clean Water Program as Amicus Curiae on behalf of Real Parties in Interest and Appellants.

Kamala D. Harris and Xavier Becerra, Attorneys General, Douglas J. Woods, Senior Assistant Attorney General, Peter K. Southworth, Nelson R. Richards, and Kathleen A. Lynch, Deputy Attorneys General, for Plaintiffs and Respondents.

No appearance for Defendant.

Opinion

NICHOLSON, J.

***667** The California Constitution requires the state to provide a subvention of funds to compensate local governments for the costs of a new program or higher level of service the state mandates. (Cal. Const., art. XIII B, § 6 (section 6).) Subvention is not available if the state imposes a requirement that is mandated by the federal government, unless the state order mandates costs that exceed those incurred under the federal mandate. (Gov. Code, § 17556, subd. (c).) The Commission on State Mandates (the Commission) adjudicates claims for subvention.

****850** In *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 207 Cal.Rptr.3d 44, 378 P.3d 356 (*Department of Finance*), the California Supreme Court upheld a Commission ruling that certain conditions a regional water quality control board imposed on a storm water discharge permit issued under federal and state law required subvention and were not federal mandates. The high court found no federal law, regulation, or administrative case authority expressly required the conditions. It ruled the federal requirement that the permit reduce pollution impacts to the “maximum extent practicable” was not a federal mandate, but rather vested the regional board with discretion to choose which conditions to impose to meet the standard. The permit conditions resulting from the exercise of that choice were state mandates.

In this appeal, we face the same issue. The parties and the permit conditions are different, but the legal issue is the same—whether the Commission correctly determined that conditions imposed on a federal and state storm water permit by a regional water quality control board are state mandates. The Commission reached its decision by applying the standard the Supreme Court later adopted in *Department of Finance*. The trial court, reviewing the case before *Department of Finance* was issued, concluded

the Commission had applied the wrong standard, and it remanded the matter to the Commission for further proceedings.

Following the analytical regime established by *Department of Finance*, we reverse the trial court's judgment. We conclude the Commission applied the correct standard and the permit requirements are state mandates. We reach this conclusion on the same grounds the high court in *Department of Finance* reached its conclusion. No federal law, regulation, or administrative case authority expressly required the conditions. The requirement to reduce pollution impacts to the “maximum extent practicable” was not a federal mandate, but instead vested the regional board with discretion to choose which conditions to impose to meet the standard. The permit conditions resulting from the exercise of that choice in this instance were state mandates.

***668** We remand the matter so the trial court may consider other issues the parties raised in their pleadings but the court did not address.

BACKGROUND

In *Department of Finance*, the Supreme Court explained the storm water discharge permitting system and the constitutional reimbursement system in detail. We quote from the opinion at length:

A. The storm water discharge permitting system

“The Operators' municipal storm sewer systems discharge both waste and pollutants.^[1] State law controls ‘waste’ discharges. (Wat. Code, § 13265.) Federal law regulates discharges of ‘pollutant[s].’ (33 U.S.C. § 1311(a).) Both state and later-enacted federal law require a permit to operate such systems.

“California's Porter-Cologne Water Quality Control Act (Porter-Cologne Act ****851** or the Act; Wat. Code, § 13000 et seq.) was enacted in 1969. It established the State Water Resources Control Board (State Board), along with nine regional water quality control boards, and gave those agencies ‘primary responsibility for the coordination and control of water quality.’ (Wat. Code, § 13001; see *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862

(*City of Burbank*.) The State Board establishes statewide policy. The regional boards formulate and adopt water quality control plans and issue permits governing the discharge of waste. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128 (*Building Industry*.)

“The Porter-Cologne Act requires any person discharging, or proposing to discharge, waste that could affect the quality of state waters to file a report with the appropriate regional board. (Wat. Code, § 13260, subd. (a) (1).) The regional board then ‘shall prescribe requirements as to the nature’ of the discharge, implementing any applicable water quality control plans. (Wat. Code, § 13263, subd. (a).) The Operators must follow all requirements set by the Regional Board. (Wat. Code, §§ 13264, 13265.)

“The federal Clean Water Act (the CWA; 33 U.S.C. § 1251 et seq.) was enacted in 1972, and also established a permitting system. The CWA is a *669 comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. (*City of Burbank, supra*, 35 Cal.4th at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The CWA prohibits pollutant discharges unless they comply with (1) a permit (see 33 U.S.C. §§ 1328, 1342, 1344); (2) established effluent limitations or standards (see 33 U.S.C. §§ 1312, 1317); or (3) established national standards of performance (see 33 U.S.C. § 1316). (33 U.S.C. § 1311(a).) The CWA allows any state to adopt and enforce its own water quality standards and limitations, so long as those standards and limitations are not ‘less stringent’ than those in effect under the CWA. (33 U.S.C. § 1370.)

“The CWA created the National Pollutant Discharge Elimination System (NPDES), authorizing the Environmental Protection Agency (EPA) to issue a permit for any pollutant discharge that will satisfy all requirements established by the CWA or the EPA Administrator. (33 U.S.C. § 1342(a)(1), (2).) The federal system notwithstanding, a state may administer its own permitting system if authorized by the EPA.^[2] If the EPA concludes a state has adequate authority to administer its proposed program, it must grant approval (33 U.S.C. § 1342(b)) and suspend its own issuance of permits (33 U.S.C. § 1342(c)(1)).^[3]

“California was the first state authorized to issue its own pollutant discharge permits. (*People ex rel. State Water Resources Control Bd. v. Environmental Protection Agency* (9th Cir. 1975) 511 F.2d 963, 970, fn. 11, revd. on other grounds in **852 *EPA v. State Water Resources Control Board* (1976) 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578.) Shortly after the CWA’s enactment, the Legislature amended the Porter-Cologne Act, adding chapter 5.5 (Wat. Code, § 13370 et seq.) to authorize state issuance of permits (Wat. Code, § 13370, subd. (c)). The Legislature explained the amendment was ‘in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to [the Porter-Cologne Act].’ (*Ibid.*) The Legislature provided that chapter 5.5 be ‘construed to ensure consistency’ with the CWA. (Wat. Code, § 13372, subd. (a).) It directed that state and regional boards issue waste discharge requirements ‘ensur[ing] compliance with all applicable provisions of the [CWA] ... together with any more stringent effluent standards or limitations necessary to implement water quality control plans, *670 or for the protection of beneficial uses, or to prevent nuisance.’ (Wat. Code, § 13377, italics added.)^[4] To align the state and federal permitting systems, the legislation provided that the term ‘“waste discharge requirements”’ under the Act was equivalent to the term ‘“permits”’ under the CWA. (Wat. Code, § 13374.) Accordingly, California’s permitting system now regulates discharges under both state and federal law. (*WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1452, 126 Cal.Rptr.2d 389; accord, *Building Industry, supra*, 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128.)

“In 1987, Congress amended the CWA to clarify that a permit is required for any discharge from a municipal storm sewer system serving a population of 100,000 or more. (33 U.S.C. § 1342(p)(2)(C), (D).) Under those amendments, a permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit non-stormwater discharges into the storm sewers, and must ‘require controls to reduce the discharge of pollutants to the maximum extent practicable.’ (33 U.S.C. § 1342(p)(3)(B), italics added.) The phrase ‘maximum extent practicable’ is not further defined. How that phrase is applied, and by whom, are important aspects of this case.

“EPA regulations specify the information to be included in a permit application. (See 40 C.F.R. § 122.26(d)(1)(i)-(vi), (2)(i)-(viii).) Among other things, an applicant must set out a proposed management program that includes management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable. (40 C.F.R. § 122.26(d)(2)(iv).) The permit-issuing agency has discretion to determine which practices, whether or not proposed by the applicant, will be imposed as conditions. (*Ibid.*)” (*Department of Finance, supra*, 1 Cal.5th at pp. 755-757, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)⁵

B. *The permit before us*

In 2007, the Regional Water Quality Control Board, San Diego Region (the San Diego Regional Board), issued a permit to real parties in interest and appellants, the County of San Diego and the cities located in the county (the “permittees” or “copermittees”).⁶ The permit was actually a renewal ****853** of an ***671** NPDES permit first issued in 1990 and renewed in 2001. The San Diego Regional Board stated the new permit “specifies requirements necessary for the Copermittees to reduce the discharge of pollutants in urban runoff to the maximum extent practicable (MEP).” The San Diego Regional Board found that although the permittees had generally been implementing the management programs required in the 2001 permit, “urban runoff discharges continue to cause or contribute to violations of water quality standards. This [permit] contains new or modified requirements that are necessary to improve Copermittees' efforts to reduce the discharge of pollutants in urban runoff to the MEP and achieve water quality standards.”

The permit requires the permittees to implement various programs to manage their urban runoff that were not required in the 2001 permit. It requires the permittees to implement programs in their own jurisdictions. It requires the permittees in each watershed to collaborate to implement programs to manage runoff from that watershed, and it requires all of the permittees in the region to collaborate to implement programs to manage regional runoff. The permit also requires the permittees to assess the effectiveness of their programs and collaborate in their efforts.

The specific permit requirements involved in this case require the permittees to do the following:

- (1) As part of their jurisdictional management programs:
 - (a) Sweep streets at certain times, depending on the amount of debris they generate, and report the number of curb miles swept and tons of material collected;
 - (b) Inspect, maintain, and clean catch basins, storm drain inlets, and other storm water conveyances at specified times and report on those activities;
 - (c) Collaboratively develop and individually implement a hydromodification management plan to manage increases in runoff discharge rates and durations;⁷
 - (d) Collectively update the best management practices requirements listed in their local Standard Urban Storm Water Mitigation Plans (SUSMP's) and add low impact development best management practices for new real property development and redevelopment;
 - *672** (e) Individually implement an education program using all media to inform target communities about municipal separate storm sewer systems (MS4's) and impacts of urban runoff, and to change the communities' behavior and reduce pollutant releases to MS4's;
- (2) As part of their watershed management programs, collaboratively develop and implement watershed water quality activities and education activities within established schedules and by means of frequent regularly scheduled meetings;
- (3) As part of their regional management programs:
 - (a) Collaboratively develop and implement a regional urban runoff management program to reduce the ****854** discharge of pollutants from MS4's to the maximum extent practicable;
 - (b) Collaboratively develop and implement a regional education program focused on residential sources of pollutants;

- (4) Annually assess the effectiveness of the jurisdictional, watershed, and regional urban runoff management programs, and collaboratively develop a long-term effectiveness assessment to assess the effectiveness of all of the urban runoff management programs; and
- (5) Jointly execute a memorandum of understanding, joint powers authority, or other formal agreement that defines the permittees' responsibilities under the permit and establishes a management structure, standards for conducting meetings, guidelines for workgroups, and a process to address permittees' noncompliance with the formal agreement.

The permittees estimated complying with these conditions would cost them more than \$66 million over the life of the permit.

C. Reimbursement for state mandates

“[W]hen the Legislature or a state agency requires a local government to provide a new program or higher level of service, the state must ‘reimburse that local government for the costs of the program or increased level of service.’ (Cal. Const., art. XIII B, § 6, subd. (a) (hereafter, section 6).)^[8]” (*Department of Finance, supra*, 1 Cal.5th at pp. 758-759, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

***673** “Voters added article XIII B to the California Constitution in 1979. Also known as the ‘‘Gann limit,’’ it ‘restricts the amounts state and local governments may appropriate and spend each year from the ‘‘proceeds of taxes.’’” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58-59, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*)). ‘Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend for public purposes.’ (*Id.* at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)

“The ‘concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby

transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.’ (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) The reimbursement provision in section 6 was included in recognition of the fact ‘that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.’ (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 [61 Cal.Rptr.2d 134, 931 P.2d 312] (*County of San Diego*)). The ****855** purpose of section 6 is to prevent ‘the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘‘ill equipped’’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.’ (*County of San Diego, at p. 81* [61 Cal.Rptr.2d 134, 931 P.2d 312].) Thus, with certain exceptions, section 6 ‘requires the state ‘‘to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.’’” (*County of San Diego, at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.*)” (*Department of Finance, supra*, 1 Cal.5th at pp. 762-763, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)

A significant exception to section 6's subvention requirement is at issue here. Under that exception, “reimbursement is not required if [t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.” (*Gov. Code, § 17556, subd. (c).*)

“The Legislature has enacted comprehensive procedures for the resolution of reimbursement claims (*Gov. Code, § 17500 et seq.*) and created the Commission to adjudicate them (*Gov. Code, §§ 17525, 17551*). It also established ‘a test-claim procedure to expeditiously resolve disputes affecting ***674** multiple agencies.’ (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 285 Cal.Rptr. 66, 814 P.2d 1308 (*Kinlaw*)).

“The first reimbursement claim filed with the Commission is called a test claim. (*Gov. Code, § 17521.*) The Commission must hold a public hearing, at which the Department of Finance (the Department), the claimant, and any other affected department or agency may present

evidence. (Gov. Code, §§ 17551, 17553.) The Commission then determines ‘whether a state mandate exists and, if so, the amount to be reimbursed.’ (Kinlaw, *supra*, 54 Cal.3d at p. 332, 285 Cal.Rptr. 66, 814 P.2d 1308.) The Commission’s decision is reviewable by writ of mandate. (Gov. Code, § 17559.)” (Department of Finance, *supra*, 1 Cal.5th at pp. 758-759, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

D. The test claim and the writ petition

In 2008, the permittees filed a test claim with the Commission. They contended the permit requirements mentioned above constituted new or modified requirements that were compensable state mandates under section 6. The State, the San Diego Regional Board and the Department of Finance (collectively the “State”) claimed the requirements were not compensable because they were mandated by the federal CWA’s NPDES permit requirements.

In 2010, the Commission ruled all of the targeted requirements were state mandates and not federal mandates. The Commission found the requirements were not federal mandates because they were not expressly specified in, or they exceeded the scope of, federal regulations. The Commission determined the permittees were entitled to subvention by the state for all of the requirements except two. The Commission ruled the requirements to develop a hydromodification plan and to include low impact development practices in the SUSMP’s were not entitled to subvention because the permittees had authority to impose fees to recover the costs of those requirements.

The State petitioned the trial court for a writ of administrative mandate. It contended the Commission erred because the permit requirements are federal mandates **856 and are not a new program or higher level of service. It also contended the Commission erred in concluding the County of San Diego did not have fee authority to pay for all of the permit conditions.

The County of San Diego filed a cross-petition for writ of mandate to challenge the Commission’s decision that the conditions requiring a hydromodification plan and low impact development practices were not reimbursable.

The trial court granted the State’s petition in part and issued a writ of mandate. It concluded the Commission applied an incorrect standard when it *675 determined

the permit conditions were not federal mandates. It held the Commission was required to determine whether any of the permit requirements exceeded the “maximum extent practicable” standard imposed by the CWA. “The Commission never undertook this inquiry,” the court stated. “Instead, it simply asked whether the permit conditions are expressly specified in federal regulations or guidelines. This is not the test. The fact that a permit condition is not specified in a federal regulation or guideline does not determine whether the condition is ‘practicable,’ and thus required by federal law. The mere fact that a permit condition is not promulgated as a federal regulation does not mean it exceeds the federal standard.”

The trial court remanded the matter to the Commission to reconsider its decision in light of the court’s ruling. The court did not address the fee issues raised by the petition and cross-petition.

The permittees appeal from the trial court’s judgment. ⁹, ¹⁰

DISCUSSION

I

Standard of Review

While this appeal was pending, the Supreme Court issued *Department of Finance*. There, the high court had to answer the same question we must answer: are certain requirements imposed by the San Diego Regional Board in an NPDES permit federal mandates and not reimbursable state mandates? Although the high court reviewed conditions different from those before us, it established the law we must apply to resolve this appeal. ¹¹

[1] As to the standard of review, “[t]he question whether a statute or executive order imposes a mandate is a question of law. [(*676 *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)] Thus, we review the entire record before the Commission, which includes references to federal and state statutes and regulations, as well as evidence of other permits and the parties’ **857 obligations under those permits, and independently determine whether it supports the Commission’s conclusion that the conditions here were

not federal mandates. (*Ibid.*)” (*Department of Finance, supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.) To do this, we must determine “whether federal statutory, administrative, or case law imposed, or compelled the [San Diego] Regional Board to impose, the challenged requirements on the [permittees].” (*Id.* p. 767, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

II

Analysis

Under the test announced in *Department of Finance*, we conclude federal law did not compel imposition of the permit requirements, and they are subject to subvention under section 6. This is because the requirement to reduce pollutants to the “maximum extent practicable” was not a federal mandate for purposes of section 6. Rather, it vested the San Diego Regional Board with discretion to choose how the permittees must meet that standard, and the exercise of that discretion resulted in imposing a state mandate. We also find no federal law, regulation, or administrative case authority that, under the test provided by *Department of Finance*, expressly required the conditions the San Diego Regional Board imposed.

A. *The Department of Finance decision*

We first describe *Department of Finance*, its context, its holding, and its analysis. Prior to its *Department of Finance* decision, the California Supreme Court declared in *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 that “certain regulatory standards imposed by the federal government under ‘cooperative federalism’ schemes” are federal mandates and not reimbursable under section 6. (*Id.* at pp. 73-74, 266 Cal.Rptr. 139, 785 P.2d 522.) In that case, the court held federal legislation requiring local governments to provide unemployment insurance protection to their employees was a federal mandate. It was a federal mandate because failing to extend the protection would have resulted in the state’s businesses facing additional unemployment taxation and penalties by both state and federal governments. (*Id.* at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) “[T]he state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the

realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (*Ibid.*)

*677 The *City of Sacramento* court refused to announce a “final test” for determining whether a requirement imposed under a cooperative federal-state program was a federal mandate. (*City of Sacramento, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.) Instead, it required courts to determine whether a requirement was a federal mandate on a case-by-case basis. It stated: “Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9, subd. (b) [of the California Constitution]: neither **858 state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.” (*City of Sacramento, supra*, at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

In *Department of Finance*, the Supreme Court changed course and announced a test for determining whether a requirement imposed on a permit under a cooperative federal-state program is a federal mandate. To determine whether a requirement imposed under the CWA and state law on an NPDES permit is a federal mandate, a court applies the following test: “If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a ‘true choice,’ the requirement is not federally mandated.” (*Department of Finance, supra*, 1 Cal.5th at p. 765, 207 Cal.Rptr.3d 44, 378 P.3d 356.) If the state in opposition to the petition contends its requirements are federal mandates, it has the burden to establish the requirements are in fact mandated by federal law. (*Id.* at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

In *Department of Finance*, the high court held conditions imposed on an NPDES permit issued by the Regional

Water Quality Control Board, Los Angeles Region (the Los Angeles Regional Board), to Los Angeles County and various cities were not federal mandates and were subject to subvention under section 6. The permit conditions required the permittees to install and maintain trash receptacles at transit stops, and to inspect certain commercial and industrial facilities and construction sites. (*Department of Finance, supra*, 1 Cal.5th at p. 755, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The Commission determined each of the conditions was a compensable state mandate, and the Supreme Court, reversing the Court of Appeal, upheld the Commission's decision.

The high court ruled federal law did not compel the conditions to be imposed. The court stated: "It is clear federal law did not compel the [Los *678 Angeles] Regional Board to impose these particular requirements. There was no evidence the state was compelled to administer its *own* permitting system rather than allowing the EPA do so under the CWA. (33 U.S.C. § 1342(a).) ... [T]he state chose to administer its own program, finding it was 'in the interest of the people of the state, *in order to avoid direct regulation by the federal government* of persons already subject to regulation' under state law. (*Wat. Code*, § 13370, *subd. (c)*, italics added.) Moreover, the [Los Angeles] Regional Board was not required by federal law to impose any specific permit conditions. The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).) This case is distinguishable from *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, where the state risked the loss of subsidies and tax credits for all its resident businesses if it failed to comply with federal legislation. Here, the State was not compelled by federal law to impose any particular requirement. Instead, ... the [Los Angeles] Regional Board had discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard." (*Department of Finance, supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356, original italics.)

****859** The State contended the Commission decided the existence of a federal mandate on grounds that were too rigid. It argued the Commission should have accounted for the flexibility in the CWA's regulatory scheme and the

"maximum extent practicable" standard. It also should have deferred to the terms of the permit as the best expression of what federal law required in that instance since the terms were based on the agencies' scientific, technical, and experiential knowledge.

The Supreme Court rejected both arguments. The court stated: "We disagree that the Permit itself demonstrates what conditions would have been imposed had the EPA granted the Permit. In issuing the Permit, the [Los Angeles] Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. (*City of Burbank, supra*, 35 Cal.4th at pp. 627-628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law.

"We also disagree that the Commission should have deferred to the [Los Angeles] Regional Board's conclusion that the challenged requirements were federally mandated. That determination is largely a question of law. Had the [Los Angeles] Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's *679 expertise in reaching that finding would be appropriate. The board's legal authority to administer the CWA and its technical experience in water quality control would call on sister agencies as well as courts to defer to that finding. The State, however, provides no authority for the proposition that, absent such a finding, the Commission should defer to a state agency as to whether requirements were state or federally mandated. Certainly, in a trial court action challenging the *board's authority* to impose specific permit conditions, the board's findings regarding what conditions satisfied the federal standard would be entitled to deference. (See, e.g., *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817-818, 85 Cal.Rptr.2d 696, 977 P.2d 693.) Resolution of those questions would bring into play the particular technical expertise possessed by members of the regional board. In those circumstances, the party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. (*Rancho Cucamonga, at p. 1387*, 38 Cal.Rptr.3d 450; *Building*

Industry, supra, 124 Cal.App.4th at pp. 888-889, 22 Cal.Rptr.3d 128.)

“Reimbursement proceedings before the Commission are different. The question here was not whether the [Los Angeles] Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California’s constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.” (*Department of Finance, supra*, 1 Cal.5th at pp. 768-769, 207 Cal.Rptr.3d 44, 378 P.3d 356, fn. omitted, original italics.)

Addressing the permit’s specific requirements, the Supreme Court determined they were not mandated by federal law but instead were imposed pursuant to the State’s discretion. Regarding the site inspection **860 requirements, the court found neither the CWA’s “maximum extent practicable” standard, the CWA itself, nor the EPA regulations “expressly required” the inspection conditions. (*Department of Finance, supra*, 1 Cal.5th at p. 770, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The court also determined that in this instance, state and federal law required the Los Angeles Regional Board to conduct the inspections. By exercising its discretion and shifting responsibility for the inspections onto the permittees as a condition of the permit, the Los Angeles Regional Board imposed a state mandate. (*Id.* at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State argued the inspection requirements were federal mandates because EPA regulations contemplated that some kind of operator inspections would be required. The court was not persuaded: “That the EPA regulations *680 contemplated some form of inspections ... does not mean that federal law required the scope and detail of inspections required by the Permit conditions.” (*Department of Finance, supra*, 1 Cal.5th at p. 771, 207 Cal.Rptr.3d 44, 378 P.3d 356, fn. omitted.)

As for the trash receptacle requirement, the Supreme Court agreed with the Commission that it was not a federal mandate because neither the CWA nor the federal regulation cited by the state “explicitly required” the installation and maintenance of trash receptacles.

(*Department of Finance, supra*, 1 Cal.5th at p. 771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State argued the condition was mandated by the EPA regulations that required the permittees to include in their application a description of practices for operating roads and procedures for reducing the impact of discharges from MS4’s. The Supreme Court rejected this argument: “While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make those practices conditions of the permit. (40 C.F.R. § 122.26(d) (2)(iv).) No regulation cited by the State required trash receptacles at transit stops.” (*Department of Finance, supra*, 1 Cal.5th at pp. 771-772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

In addition, the court found evidence the EPA had issued NPDES permits in other cities that did not require trash receptacles at transit stops. “The fact the EPA itself had issued permits in other cities, but did not include the trash receptacle condition, undermines the argument that the requirement was federally mandated.” (*Department of Finance, supra*, 1 Cal.5th at p. 772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

B. *Applying Department of Finance to this appeal*

Having reviewed *Department of Finance*, we now turn to apply its ruling and analysis to the permit requirements before us. Again, our task is two-fold. We must determine first whether the CWA, its regulations and guidelines, and any other evidence of federal mandate such as similar permits issued by the EPA, required each condition. If they did, we conclude the requirement is a federal mandate and not entitled to subvention under section 6. Second, if the condition was not “expressly required” by federal law but was instead imposed pursuant to the State’s discretion, we conclude the requirement is not federally mandated and subvention is required. The State has the burden to establish the requirements were imposed by federal law. It has not met its burden here.

1. *The “maximum extent practicable” standard*

[2] The State contends the permit requirements were federal mandates because it had no discretion but to impose conditions **861 that satisfied the *681

“maximum extent practicable” standard. We disagree with the state's interpretation of its discretion. The “maximum extent practicable” standard by its nature is discretionary and does not by itself impose a federal mandate for purposes of section 6. Before *Department of Finance* was issued, the State argued here that the Clean Water Act's “maximum extent practicable” standard was a federal mandate because it is flexible and contemplates that specific measures will be implemented to meet the unique requirements of any particular waterway and water quality. *Department of Finance* rejected this argument for purposes of subvention under section 6. “The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).)” (*Department of Finance, supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

There is no dispute the CWA and its regulations grant the San Diego Regional Board discretion to meet the “maximum extent practicable” standard. The CWA requires NPDES permits for MS4's to “require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” (33 U.S.C.S. § 1342(p)(3)(B)(iii), italics added.)

EPA regulations also describe the discretion the State will exercise to meet the “maximum extent practicable” standard. The regulations require a permit application by an MS4 to propose a management program. This program “shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. ... Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable.” (40 C.F.R. § 122.26 (d)(2) (iv), italics added.) This regulation implies the San Diego Regional Board has wide discretion to determine how best

to condition the permit in order to meet the “maximum extent practicable” standard.

Yet the State argues the San Diego Regional Board really did not exercise discretion in imposing the challenged requirements. It contends the Supreme Court in *Department of Finance* did not look for differences between federal law and the terms of the permit. Rather, the court allegedly searched the record to see if the Los Angeles Regional Board exercised a true choice in *682 imposing permit conditions or if it instead imposed requirements necessary to satisfy federal law. Applying that test here, the State asserts the San Diego Regional Board in this case did not exercise a true choice in imposing any of the permit requirements because it was required to impose requirements that satisfied the “maximum extent practicable” standard. Indeed, the San Diego Regional Board here made a finding its requirements were “necessary” in order to reduce pollutant discharge to the maximum extent practicable, a finding the Los Angeles Regional Board in *Department of Finance* did not expressly make.

The State also contends the San Diego Regional Board did not make a true choice **862 because the permittees in their permit application proposed methods of compliance, and the San Diego Regional Board made modifications “so those methods would achieve the federal standard.” The State asserts the permit requirements were not state mandates because they were based on the proposals in the application, “not the [San Diego] Regional Board's preferences for how the copermitees should comply.”

The State misconstrues *Department of Finance* in numerous respects. First, the Supreme Court did in fact look for differences between federal law and the terms of the permit to determine if the condition was a federal mandate. The high court stated that, to be a federal mandate for purposes of section 6, the federal law or regulation must “expressly” or “explicitly” require the specific condition imposed in the permit. (*Department of Finance, supra*, 1 Cal.5th at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

Second, the Supreme Court found the “maximum extent practicable” did not preclude the State from making a choice; rather, it gave the State discretion to make a choice. “The federal CWA broadly directed the board to issue permits with conditions designed to reduce pollutant

discharges to the maximum extent practicable. But the EPA's regulations gave the board discretion to determine which specific controls were necessary to meet that standard. (40 C.F.R. § 122.26(d)(2)(iv).) (*Department of Finance, supra*, 1 Cal.5th at pp. 767-768, 207 Cal.Rptr.3d 44, 378 P.3d 356.) As the high court stated, except where a regional board finds the conditions are the only means by which the “maximum extent practicable” standard can be met, the State exercises a true choice by determining what controls are necessary to meet the standard. (*Id.* at p. 768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

That the San Diego Regional Board found the permit requirements were “necessary” to meet the standard establishes only that the San Diego Regional Board exercised its discretion. Nowhere did the San Diego Regional Board find its conditions were the only means by which the permittees could meet the standard. Its use of the word “necessary” did not equate to finding the permit requirement was the *only* means of meeting the standard. “It is simply *683 not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law.” (*Department of Finance, supra*, 1 Cal.5th at p. 768, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The use of the word “necessary” also does not distinguish this case from *Department of Finance*. By law, a regional board cannot issue an NPDES permit to MS4's without finding it has imposed conditions “necessary to carry out the provisions of [the Clean Water Act].” (33 U.S.C. § 1342(a)(1).) That requirement includes imposing conditions necessary to meet the “maximum extent practicable” standard, and the regional board in *Department of Finance* found the conditions it imposed had done so. The Los Angeles Regional Board stated: “This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.” It further stated: “[T]his Order requires that the [Storm Water Quality Management Plan] specify BMPs [best management practices] that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable.”

Third, the Supreme Court in *Department of Finance* rejected the State's argument **863 that the permit

application somehow limited a board's discretion or denied it a true choice. “While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).)” (*Department of Finance, supra*, 1 Cal.5th at pp. 771-772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State had a true choice and exercised its discretion in determining and imposing the conditions it concluded were necessary to reduce storm water pollutants to the maximum extent practicable. Because the State exercised this discretion, the permit requirements it imposed were not federal mandates.

2. No express demand by federal law

[3] The State contends federal law nonetheless required the conditions it imposed. It relies on regulations broadly describing what must be included in an NPDES permit application by an MS4 instead of express mandates directing the San Diego Regional Board to impose the requirements it imposed. To be a federal mandate for purposes of section 6, however, the federal law or regulation must “expressly” or “explicitly” require the condition imposed in the permit. (*Department of Finance, supra*, 1 Cal.5th at pp. 770-771, 207 Cal.Rptr.3d 44, 378 P.3d 356.) This is the standard the Commission applied and found the *684 State's claims unwarranted. We do as well. The State cites to no law, regulation, or EPA case authority presented to the Commission or the trial court that expressly required any of the challenged permit requirements. We briefly review the requirements.

a. Street sweeping and cleaning storm water conveyances

[4] The State contends the requirements for street sweeping and cleaning of the storm sewer system are federal mandates because EPA regulations required the permittees to describe in their permit application their practices for operating and maintaining streets and procedures for reducing the impact of discharges from storm sewer systems. (40 C.F.R. § 122.26(d)(2)(iv)(A)(3).) This regulation does not expressly require the scope and detail of street sweeping and facility maintenance the permit imposes. Because the State imposed those specific

requirements, they are not federal mandates and must be compensated under section 6.

The permit requires the permittees to sweep streets a certain number of times depending on how much trash and debris they generate. Streets that consistently generate the highest volume of trash must be swept at least twice per month. Streets that generate moderate volumes of trash must be swept at least monthly, and those that generate low volumes of trash must be swept at least annually. Permittees must annually report the total distance of curb miles swept and the tons of material collected.

The permit also requires the permittees to implement a schedule of maintenance activities for their storm sewer systems and facilities, such as catch basins, storm drain inlets, open channels, and the like. At a minimum, the permittees must inspect all facilities at least annually and must inspect facilities that receive high volumes of trash at least once a year between May 1 and September 30. The permit requires any catch basin or storm drain inlet that has accumulated trash greater than 33 percent of its design capacity to be cleaned in a timely manner. Any facility designed to be self-cleaning must be cleaned immediately of any accumulated trash. The permittees must keep ****864** records of their maintenance and cleaning activities.

We see nothing in the regulation requiring permittees to describe in their application their street and facility maintenance practices a mandate to impose the specific requirements actually imposed in the permit.

b. *Hydromodification plan*

[5] The State claims the requirement to develop a hydromodification plan (HMP) arises from EPA regulations requiring the permit applicant to ***685** include in its application a description of planning procedures to develop and enforce controls “to reduce the discharge of pollutants from [MS4’s] which receive discharges from areas of new development and significant redevelopment.” (40 C.F.R. § 122.26(d)(2)(iv)(A)(2).) The permit requires the HMP to establish standards of runoff flow for channel segments that receive runoff from new development. It must require development projects to implement control measures so that the flows from the completed project generally do not exceed the flows before

the project was built. The HMP must include other performance criteria as well as a description of how the permittees will incorporate the HMP requirements into their local approval process.

The regulation cited by the State does not require an HMP. Nor does it restrict the San Diego Regional Board from exercising its discretion to require a specific type of plan to address the impacts from new development. The San Diego Regional Board admittedly exercised its discretion on this condition. It determined the permittees’ application was insufficient and it required them to collaborate to develop an HMP. The requirement is thus a state mandate subject to subvention.

c. *Low impact development practices in the SUSMP*

[6] The State relies upon the same regulation to support the low impact development requirements as it did for the HMP. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2).) The permit requires the permittees to implement specified low impact development best management practices at most new development and redevelopment projects. These practices include designing the projects to drain runoff into previous areas on site and using permeable surfaces for low traffic areas. The practices also require projects to conserve natural areas and minimize the project’s impervious footprint where feasible.

The permit also requires the permittees to develop a model SUSMP to establish low impact development best management practices that meet or exceed the requirements just mentioned. The model must include siting, design, and maintenance criteria for each low impact development best management practice listed in the model SUSMP. Again, nothing in the application regulation required the San Diego Regional Board to impose these specific requirements. As a result, they are state mandates subject to section 6.

d. *Jurisdictional and regional education programs*

[7] The State claims regulations requiring the permittees to describe in their permit application the educational programs they will conduct to ***686** increase the public’s knowledge of storm water pollution imposed a federal mandate. (40 C.F.R. § 122.26(d)(2)(iv)(A)(6), (B)(6), (D)

(4.) The regulations require the application to include descriptions of proposed educational activities to reduce pollutants associated with the application of pesticides, herbicides and fertilizer (40 C.F.R. § 122.26(d)(2)(iv)(A)(6)), to facilitate the ****865** proper management and disposal of used oil and toxic materials (40 C.F.R. § 122.26(d)(2)(iv)(B)(6)), and to reduce pollutants in storm runoff from construction sites. (40 C.F.R. § 122.26(d)(2)(iv)(D)(4).)

The permit requires each permittee to do much more. Each must implement an education program using all media as appropriate to “measurably increase” the knowledge of MS4’s, impacts of urban runoff, and potential best management practices, and to “measurably change” people’s behaviors. The program must address at a minimum five target communities: municipal departments and personnel; construction site owners and developers; industrial owners and operators; commercial owners and operators; and the residential community, the general public, and school children. The program must educate each target community where appropriate on a number of specified topics. It must educate them on federal, state, and local water quality laws and regulations, including the storm water discharge permitting system. It must address general runoff concepts, such as the impacts of urban runoff on receiving waters, the distinctions between MS4’s and sanitary sewers, types of best management practices, water quality impacts associated with urbanization, and non-storm water discharge prohibitions. It must discuss specific best management practices for such activities as good housekeeping, proper waste disposal, methods to reduce the impacts from residential and charity car washing, non-storm water disposal alternatives, preventive maintenance, and equipment and vehicle maintenance and repair. The program must also address public reporting mechanisms, illicit discharge detection, dechlorination techniques, integrated pest management, the benefits of native vegetation, water conservation, alternative materials and designs to maintain peak runoff values, traffic reduction, and alternative fuel use. The permit also requires additional specific topics to be addressed that are relevant to each particular target community.

The San Diego Regional Board imposed an educational program and a list of topics that surpasses what the regulations required the permittees to propose in their application. Nothing in the regulations required the

San Diego Regional Board to impose the educational requirements in the scope and detail it did. As a result, they are state mandates subject to section 6.

**687 e. Regional and watershed urban runoff management programs*

[8] To claim the requirements to develop regional and watershed urban runoff management programs are federal mandates, the State relies on the regulation requiring permit applications to propose a management program as part of their application. The regulation authorizes the applicants to propose a program that imposes controls beyond a single jurisdiction: “Proposed programs *may* impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.” (40 C.F.R. § 122.26(d)(2)(iv), italics added.)

The permit *requires* the permittees to collaborate, develop, and implement watershed and regional urban runoff management programs. As part of the watershed management program, the permittees must, among other things, annually assess the water quality of receiving waters and identify the water quality problems attributable to MS4 discharges. They must develop and implement a list of water quality activities and education activities and submit the list for approval by the San Diego Regional Board. The permit describes what information must be included on the list for each activity, and it requires the permittees to implement each of them.

****866** The permit requires the permittees, as part of developing a regional management program, to implement a residential education program as described above, develop standardized fiscal analysis of the programs in their jurisdictions, and facilitate the assessment of the jurisdictional, watershed, and regional programs’ effectiveness.

The regulation relied upon by the State does not mandate any of these watershed and regional management requirements. It clearly leaves to the San Diego Regional Board the discretion to require controls on a systemwide, watershed, or jurisdictional basis. The State exercised that discretion in imposing the controls it imposed. They thus are state mandates subject to section 6.

f. *Program effectiveness assessments*

Federal regulations require a permit application to include, as part of assessing the effectiveness of controls, “[e]stimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.” (40 C.F.R. § 122.26(d)(2)(v).)

*688 The regulations also require the operator of an MS4 to submit a status report annually. The report must include: “(1) The status of implementing the components of the storm water management program that are established as permit conditions; [¶] (2) Proposed changes to the storm water management programs that are established as permit conditions[;] [¶] (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application[;] [¶] (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year; [¶] (5) Annual expenditures and budget for year following each annual report; [¶] (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; [and] [¶] (7) Identification of water quality improvements or degradation[.]” (40 C.F.R. § 122.42(c).)

The State contends these regulations mandated the San Diego Regional Board to impose the assessment requirements the permit contains, but the permit imposes additional obligations. The permit requires the permittees to assess, among other things, the effectiveness of each significant jurisdictional activity or best management practice and each watershed water quality activity and the implementation of the jurisdictional and watershed runoff management plans. They must identify and utilize “measurable targeted outcomes, assessment measures, and assessment methods” for each of these items. They must utilize certain predefined “outcome levels” to assess the effectiveness of each of the items. They must also collaborate to develop a long-term effectiveness assessment based on the same outcome levels.

While the regulations required estimated reductions in the amount of pollutants and a report on the status of

implementing controls and their effectiveness, the San Diego Regional Board exercised its discretion to mandate how and to what degree of specificity those assessments would occur. The regulations did not require the San Diego Regional Board to impose the assessment systems and procedures it actually imposed. Accordingly, those systems and procedures are state mandates subject to section 6.

g. *Permittee collaboration*

[9] EPA regulations require the permittees, as part of their application, to **867 show they have legal authority, either by statute, ordinance, or contract, to control through interagency agreements among themselves the contribution of pollutants from a portion of the municipal system to another portion in a different jurisdiction. (40 C.F.R. § 122.26(d)(2)(i)(D).) The State claims this regulation mandated the San Diego Regional Board to require the permittees to collaborate and, in particular, execute an agreement that establishes a management structure. Under the terms of the permit, the management structure must, among other things, define the permittees' responsibilities; promote consistency, development, and implementation of regional *689 activities; establish standards for conducting meetings, making decisions and sharing costs; and establish a process for addressing noncompliance with the agreement.

The EPA regulation did not impose on the San Diego Regional Board a mandate to define the terms and organization of a management structure that would allow the permittees to control pollutants that cross borders. The regulation required the San Diego Regional Board to assure itself the permittees had the authority to address runoff pollution regionally, but it did not require the San Diego Regional Board to define how the permittees would organize themselves to do so. The conditions of the San Diego Regional Board went beyond what was federally required, and are thus state mandates subject to section 6.

In short, there is no federal law, regulation, or administrative case authority that expressly mandated the San Diego Regional Board to impose any of the challenged requirements discussed above. As a result, their imposition are state mandates, and section 6 requires the State to provide subvention to reimburse the permittees for the costs of complying with the requirements.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to real parties in interest and appellants. ([Cal. Rules of Court, rule 8.278\(a\)](#).)

We concur:

[BLEASE](#), Acting P. J.

[BUTZ](#), J.

All Citations

18 Cal.App.5th 661, 226 Cal.Rptr.3d 846, 17 Cal. Daily Op. Serv. 12,021, 2017 Daily Journal D.A.R. 11,993

Footnotes

- 1 “The systems at issue here are ‘municipal separate storm sewer systems,’ sometimes referred to by the acronym ‘MS4.’ ([40 C.F.R. § 122.26\(b\)\(19\) \(2001\)](#) []). A ‘[m]unicipal separate storm sewer’ is a system owned or operated by a public agency with jurisdiction over disposal of waste and designed or used for collecting or conveying storm water. ([40 C.F.R. § 122.26\(b\)\(8\) \(2001\)](#) []). Unless otherwise indicated, all further citations to the Code of Federal Regulations are to the 2001 version.”
- 2 “For a state to acquire permitting authority, the governor must give the EPA a ‘description of the program [the state] proposes to establish,’ and the attorney general must affirm that the laws of the state ‘provide adequate authority to carry out the described program.’ ([33 U.S.C. § 1342\(b\)](#).)”
- 3 “The EPA may withdraw approval of a state’s program ([33 U.S.C. § 1342\(c\)\(3\)](#)), and also retains some supervisory authority: States must inform the EPA of all permit applications received and of any action related to the consideration of a submitted application ([33 U.S.C. § 1342\(d\)\(1\)](#).)”
- 4 The federal CWA does not prevent states from imposing any permit requirements that are more stringent than the CWA requires. ([33 U.S.C. § 1370](#).)
- 5 Using the Porter-Cologne Act’s name for a permit application, the NPDES permit application in California is referred to as a Report of Waste Discharge.
- 6 Real parties in interest and appellants are the County of San Diego and the Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.
- 7 Hydromodification is the “change in the natural watershed hydrologic processes and runoff characteristics ... caused by urbanization or other land use changes that result in increased stream flows and sediment transport.”
- 8 “ ‘ “Costs mandated by the state” means any increased costs which a local agency or school district is required to incur ... as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#).’ ([Gov. Code, § 17514](#).)”
- 9 The permittees request we take judicial notice of the NPDES permit the San Diego Regional Board issued to them in 2013 that allegedly contains less specific conditions. The State requests we take judicial notice of an NPDES permit issued by the EPA in 2011 to the District of Columbia that includes a condition similar to one above. We deny both of these requests. Neither document was before the Commission or the trial court at the time those bodies ruled in this matter, and no exceptional circumstances justify deviating from that rule. ([Vons Companies, Inc. v. Seabest Foods, Inc.](#) (1996) 14 Cal.4th 434, 444, fn. 3, 58 Cal.Rptr.2d 899, 926 P.2d 1085.) The State has also requested we take judicial notice of the NPDES permit at issue in [Department of Finance](#) pursuant to subdivisions (c) and (d) of [Evidence Code section 452](#). We grant that request.
- 10 Building Industry Legal Defense Foundation and the California Stormwater Quality Association, et al., filed amicus curiae briefs in support of the permittees.
- 11 At our request, the parties briefed the effect of [Department of Finance](#) on this appeal.

6 Cal.5th 196
Supreme Court of California.

COUNTY OF SAN DIEGO et al., Plaintiffs and
Appellants,
v.
COMMISSION ON STATE MANDATES,
Defendants and Respondents.

S239907

Filed November 19, 2018

Synopsis

Background: Counties filed a petition for writ of administrative mandamus and complaint for declaratory relief challenging Commission on State Mandates decision that costs associated with eight activities required of local governments by the Sexually Violent Predator Act (SVPA) under the Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law were not eligible for reimbursement. The Superior Court, San Diego County, No. 37-2014-0005050-CU-WM-CTL, [Richard E.L. Strauss, J.](#), denied petition. Counties appealed, and the Court of Appeal reversed and remanded with directions, [7 Cal.App.5th 12, 212 Cal.Rptr.3d 259](#). The Supreme Court granted review.

Holdings: The Supreme Court, Cuéllar, J., held that:

^[1] where a statutory provision was only technically reenacted as part of other changes made by a voter initiative and the Legislature has retained the power to amend the provision through the ordinary legislative process, the provision cannot fairly be considered “expressly included in a ballot measure” within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; disapproving [Shaw v. People ex rel. Chiang, 175 Cal.App.4th 577, 96 Cal.Rptr.3d 379](#);

^[2] SVPA provisions technically restated as part enactment of Proposition 83 were not expressly included in a ballot measure approved by the voters within the meaning of statute exempting state from reimbursing local governments for costs; and

^[3] Commission was required to consider whether the expanded sexually violent predator definition in Proposition 83 transformed the subject statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on counties.

Affirmed in part and remanded.

West Headnotes (18)

^[1] **States**
🔑 [State expenses and charges and statutory liabilities](#)

The state has conditional authority to enlist a local government in carrying out a new program or providing a higher level of service for an existing program. Cal. Const. art. 13 B, § 6; [Cal. Gov't Code § 17556](#).

[1 Cases that cite this headnote](#)

^[2] **States**
🔑 [State expenses and charges and statutory liabilities](#)

When the Legislature enacts a statute imposing obligations on a local agency without providing adequate funding to allow the locality to discharge those obligations, the local entity may file a “test claim” with the Commission on State Mandates, which then decides, after a hearing, whether the statute that is the subject of the test claim under review mandates a new program or an increased level of service and, if so, the amount to be reimbursed. [Cal. Gov't Code §§ 17521, 17551, 17557](#).

[Cases that cite this headnote](#)

[3] **Appeal and Error**
🔑 Governments and Political Subdivisions

The determination as to whether statutes impose a state mandate, and thus require reimbursement, is a question of law reviewed independently. Cal. Const. art. 13 B, § 6.

[Cases that cite this headnote](#)

through an initiative. Cal. Const. art. 13 B, § 6; Cal. Gov't Code § 17556(f).

[Cases that cite this headnote](#)

[4] **States**
🔑 State expenses and charges and statutory liabilities

Purpose of constitutional provision requiring the state reimburse local governments for costs incurred when the state enlists their assistance in implementing a state program was to prevent the state from unfairly shifting the costs of government onto local entities that were ill-equipped to shoulder the task. Cal. Const. art. 13 B, § 6.

[1 Cases that cite this headnote](#)

[7] **States**
🔑 State expenses and charges and statutory liabilities

Where the Legislature cannot use the ordinary legislative process to amend or alter duties imposed by the voters, it can no longer be reasonably characterized as the source of those duties, and thus is not required to reimburse local governments for costs incurred in connection with those duties. Cal. Const. art. 2, § 10, Cal. Const. art. 13 B, § 6(a); Cal. Gov't Code § 17556(f).

[Cases that cite this headnote](#)

[5] **States**
🔑 State expenses and charges and statutory liabilities

The state, with certain exceptions, must pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. Cal. Const. art. 13 B, § 6.

[Cases that cite this headnote](#)

[8] **States**
🔑 State expenses and charges and statutory liabilities

Not every single word printed in the body of an initiative falls within the scope of the terms “expressly included in, a ballot measure” in statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure. Cal. Const. art. 13 B, § 6(a); Cal. Gov't Code § 17556(f).

[Cases that cite this headnote](#)

[6] **States**
🔑 State expenses and charges and statutory liabilities

The state must reimburse local governments for mandates imposed by the Legislature, but not for mandates imposed by the voters themselves

[9] **Statutes**
🔑 In general; necessity

When an existing statutory section is amended — even in the tiniest part — the state Constitution requires the entire section to be reenacted as amended. Cal. Const. art. 4, § 9.

[Cases that cite this headnote](#)

[10]

Statutes

🔑 [In general; necessity](#)

The rationale for compelling reenactment of an entire statutory section when only a part is being amended is to avoid the enactment of statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect and the risk that the public, from the difficulty of making the necessary examination and comparison, failed to become apprised of the changes made in the laws. [Cal. Const. art. 4, § 9.](#)

[Cases that cite this headnote](#)

[11]

Statutes

🔑 [Relationship to statute amended; clarification or change of meaning](#)

The portions of the amended section which are copied without change are not to be considered as having been repealed and again re-enacted, but to have been the law all along. [Cal. Const. art. 4, § 9; Cal. Gov't Code § 9605.](#)

[Cases that cite this headnote](#)

[12]

States

🔑 [State expenses and charges and statutory liabilities](#)

The purpose of the constitutional ban on unfunded state mandates was to protect the strapped budgets of local governments in the wake of Proposition 13. [Cal. Const. art. 13 B, § 6.](#)

[Cases that cite this headnote](#)

[13]

Statutes

🔑 [Construction and operation of initiated statutes](#)

Purpose of limiting the Legislature's power to amend an initiative statute is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. [Cal. Const. art. 2, § 10.](#)

[Cases that cite this headnote](#)

[14]

Statutes

🔑 [Power to amend](#)

Statutes

🔑 [Construction and operation of initiated statutes](#)

When technical reenactments of an entire statutory section are required due to the amendment of a portion of it through initiative, yet involve no substantive change in a given statutory provision, the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process; this conclusion applies unless the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute. [Cal. Const. art. 4, § 9.](#)

[Cases that cite this headnote](#)

[15]

States

🔑 [State expenses and charges and statutory liabilities](#)

Where a statutory provision was only technically reenacted as part of other changes made by a voter initiative and the Legislature has retained the power to amend the provision through the ordinary legislative process, the provision cannot fairly be considered "expressly

included in a ballot measure” within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; disapproving *Shaw v. People ex rel. Chiang*, 175 Cal.App.4th 577, 96 Cal.Rptr.3d 379. Cal. Const. art. 4, § 9; Cal. Const. art. 13 B, § 6(a); Cal. Gov’t Code § 17556(f).

[Cases that cite this headnote](#)

[16]

States

🔑 [State expenses and charges and statutory liabilities](#)

Sexually Violent Predators Act (SVPA) provisions technically restated, as required by constitution, as part enactment of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica’s Law, were not expressly included in a ballot measure approved by the voters within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; restated provisions were not integral to accomplishing the initiative’s goals, nor was there any basis for believing that it was within the scope of the voters’ intended purpose in enacting the initiative to limit the Legislature’s capacity to alter or amend the provisions. Cal. Const. art. 4, § 9; Cal. Const. art. 13 B, § 6(a); Cal. Welf. & Inst. Code § 6601 et seq.; Cal. Gov’t Code § 17556(f).

[Cases that cite this headnote](#)

[17]

States

🔑 [State expenses and charges and statutory liabilities](#)

Constitutionally-required technical reenactment, as part of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica’s Law, of Sexually Violent Predators Act (SVPA) provision stating that “[t]he rights, requirements,

and procedures set forth in Section 6603 shall apply to all commitment proceedings” did not make that section “necessary to implement” Proposition 83 within meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties necessary to implement such a ballot measure; question was not whether the protections in that section were required by due process, but rather was whether the civil commitment program triggering those procedures was mandated by the state or by the voters. U.S. Const. Amend. 14; Cal. Const. art. 4, § 9; Cal. Const. art. 13 B, § 6(a); Cal. Welf. & Inst. Code §§ 6603, 6604.1; Cal. Gov’t Code § 17556(f).

[Cases that cite this headnote](#)

[18]

States

🔑 [State expenses and charges and statutory liabilities](#)

Commission on State Mandates considering counties’ test claim that they were eligible for reimbursement for costs associated with certain activities required of local governments by the Sexually Violent Predator Act (SVPA) following passage of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica’s Law was required to consider whether the expanded sexually violent predator definition in Proposition 83 transformed the subject statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on counties. Cal. Const. art. 4, § 9; Cal. Const. art. 13 B, § 6(a); Cal. Welf. & Inst. Code § 6600 et seq. Cal. Gov’t Code § 17556(f).

Witkin Library Reference: 9 Witkin, Summary of Cal. Law (11th ed. 2017) Taxation, § 119 [Requirement.]

[Cases that cite this headnote](#)

****348 ***55** Fourth Appellate District, Division One, D068657, San Diego County Superior Court, 37-2014-00005050-CU-WM-CTL, Richard E. L. Strauss, Judge.

Attorneys and Law Firms

Thomas E. Montgomery, County Counsel (San Diego), Timothy M. Barry, Chief Deputy County Counsel; Mary C. Wickham, County Counsel (Los Angeles), Sangkee Peter Lee, Deputy County Counsel; Leon J. Page, County Counsel (Orange), Suzanne E. Shoai, Deputy County Counsel; Robyn Truitt Drivon, County Counsel (Sacramento), Krista Castlebury Whitman, Assistant County Counsel; and Jean-Rene Claude Basle, County Counsel (San Bernardino), for Plaintiffs and Appellants.

Laura Arnold, Los Angeles, for California Public Defenders Association and Law Offices of the Public Defender for the County of Riverside as Amici Curiae on behalf of Plaintiffs and Appellants.

Jennifer N. Henning for California State Association of Counties and League of California Cities as Amici Curiae on behalf of Plaintiffs and Appellants.

Kamala D. Harris and Xavier Becerra, Attorneys General, Edward C. DuMont, State Solicitor General, Janill L. Richards, Principal Deputy State Solicitor General, Douglas J. Woods and Thomas S. Patterson, Assistant Attorneys General, Kathleen Boergers and Michael J. Mongan, Deputy State Solicitors General, Mark R. Beckington and Kim L. Nguyen, Deputy Attorneys General, for Defendants and Respondents Department of Finance, State Controller and State of California.

Camille Shelton, Sacramento, and Matthew B. Jones for Defendant and Respondent Commission on State Mandates.

Opinion

Opinion of the Court by CUÉLLAR, J.

*****56 *200** When convicted sex offenders have a diagnosed mental disorder making it likely they would engage in sexually violent behavior if released, they are subject to civil commitment proceedings under the Sexually Violent Predators Act (SVPA; *Welf. & Inst. Code*, § 6600 *et seq.*). County governments are responsible for filing the commitment petition, providing counsel and experts for all hearings on the petition, and housing the individual potentially subject to commitment while the petition is adjudicated. Carrying out these tasks

takes more than diligence and organization from counties — it takes money. What we must decide in this case is who pays for the duties the SVPA imposes on county governments.

For the first 15 years of the SVPA’s existence, it was the State of California that — according to the Commission on State Mandates (Commission) — had to foot the bill. But in early 2013, the Department of Finance (Department) asked the Commission to reconsider its earlier decision and declare that the SVPA was no longer a state-mandated program. The Department argued that the state’s financial responsibility ceased on November 7, 2006, when the voters enacted The Sexual Predator Punishment and Control Act: Jessica’s Law (Proposition 83), which “substantively amended and reenacted various sections of the Welfare and Institutions Code that had served as the basis for the Commission’s Statement of Decision.” (See *Gov. Code*, § 17556, *subd. (f)* [duties that are “expressly included in” or “necessary to implement” a ballot measure do not constitute “costs mandated by the *201 state”].) The Commission approved the Department’s request for redetermination in part and identified six county duties (and part of a seventh) that, ****349** effective July 1, 2011,¹ no longer constituted reimbursable state mandates. (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (Dec. 6, 2013), pp. 54-55 <<https://www.csm.ca.gov/decisions/doc96.pdf>> [as of November 15, 2018]; all Internet citations in this opinion are archived by year, docket number, and case name at <<http://www.courts.ca.gov/38324.htm>>.)

Soon thereafter, the counties of San Diego, Los Angeles, Orange, Sacramento, and San Bernardino (collectively, the Counties) filed a petition for writ of administrative mandate and a complaint for declaratory relief against the Commission, the State of California, the Department, and John Chiang in his then-official capacity as State Controller (collectively, the State respondents). The San Diego County Superior Court denied the petition and dismissed the complaint. The Court of Appeal reversed, finding that Proposition 83 did not alter in any way the state’s obligation to reimburse the Counties for the costs of implementing the SVPA. (*****57** *County of San Diego v. Commission on State Mandates* (2016) 7 Cal.App.5th 12, 18, 212 Cal.Rptr.3d 259 (*County of San Diego*)). We agree that the Commission erred when it treated Proposition 83 as a basis for terminating the state’s obligation to reimburse the Counties simply because certain provisions of the SVPA had been restated without substantive change in Proposition 83. But we also remand the matter to the Commission so it can determine, in the first instance, whether and how the initiative’s expanded

definition of an SVP may affect the state’s obligation to reimburse the Counties for implementing the amended statute.

I.

A.

^[1]The state has conditional authority to enlist a local government in carrying out a new program or providing a higher level of service for an existing program. Only when the state “reimburse[s] that local government for the costs of the program or increased level of service” may the state impose such a mandate on its local governments. (Cal. Const., art. XIII B, § 6, subd. (a).) No reimbursement is required, though, where “[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government” (Gov. Code, § 17556, subd. (c)) or where “[t]he statute or executive order imposes duties that are *202 necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election” (*id.*, subd. (f)).

^[2]Predictably, local governments often disagree with the state about who is responsible for funding new programs. For the first five years after article XIII B was adopted, such unresolved disputes ended up in court. This arrangement led to unnecessary litigation, burdened the judiciary, delayed reimbursement, and injected uncertainty into budget planning at both the state and local levels. (See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 285 Cal.Rptr. 66, 814 P.2d 1308; Gov. Code, § 17500.) Eventually, the Legislature created the Commission to streamline resolution of these disputes (Gov. Code, §§ 17525, 17551), and adopted procedures for submission and adjudication of reimbursement claims (§ 17500 *et seq.*). So when the Legislature now enacts a statute imposing obligations on a local agency without providing adequate funding to allow the locality to discharge those obligations, the local entity may file a “test claim” with the Commission. (§ 17521; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 833, 244 Cal.Rptr. 677, 750 P.2d 318.) The Commission then decides, after a hearing, whether the statute that is the subject of the test claim under review (i.e., the test

claim statute) mandates a new program or an increased level of service and, if so, the amount to be reimbursed. (§§ 17551, 17557.) Either the local agency or the state may challenge the Commission’s decision in court by filing a petition for writ of administrative mandate. (§ 17559, subd. (b).)

In 2010, the Legislature enabled either party to request reconsideration of a prior **350 Commission decision. Using formal procedures prescribed by statute, an affected state or local agency may ask that the Commission “adopt a new test claim decision to supersede a previously adopted test claim decision ... upon a showing that the state’s liability for that test claim decision ... has been modified based on a subsequent change in law.” (Gov. Code, § 17570, subd. (b).) Section 17570, subdivision (a)(2) defines a “ ‘[s]ubsequent change in law’ ” as a “change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is ***58 not a cost mandated by the state pursuant to Section 17556.” Under the Commission’s regulations implementing these provisions, the request for a new test claim decision proceeds in two steps. At the first hearing, the Commission decides whether the requesting agency “has made an adequate showing” of “a subsequent change in law ... material to the prior test claim decision.” (Cal. Code Regs., tit. 2, § 1190.5, subd. (a)(1).) A showing is “adequate” if the Commission finds the requesting agency “has a substantial possibility of prevailing at the second hearing.” (*Ibid.*) At the second hearing, the Commission decides “whether the state’s liability ... has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim *203 decision.” (*Id.*, subd. (b)(1).) If so, the Commission “shall adopt a new decision that reflects the modified liability of the state.” (*Ibid.*)

B.

The SVPA was enacted by the Legislature in 1995 to enable the involuntary civil commitment of certain persons. The individuals subject to civil commitment under the SVPA are those who, following completion of their prison terms, have a diagnosed mental disorder that makes them likely to engage in sexually violent behavior. (Welf. & Inst. Code, § 6600, subd. (a)(1); see *People v. Roberge* (2003) 29 Cal.4th 979, 984, 129 Cal.Rptr.2d 861, 62 P.3d 97.) Subsequently, the County of Los Angeles filed a test claim seeking reimbursement from the state for

the costs of complying with the duties imposed by the SVPA. On June 25, 1998, the Commission adopted a statement of decision approving reimbursement for the following eight specific local government duties (Cal. Com. on State Mandates, Statement of Decision No. CSM-4509 (June 25, 1998) p. 12 <<https://csm.ca.gov/matters/4509/doc1.pdf>> [as of November 15, 2018]):

1. Designation by the County Board of Supervisors of the appropriate district attorney or county counsel who will be responsible for the SVP civil commitment proceedings (Welf. & Inst. Code, § 6601, subd. (i));
2. Initial review of reports and records by the county's designated counsel to determine whether the county concurs with the state's recommendation (Welf. & Inst. Code, § 6601, subd. (i));
3. Preparation and filing of the petition for commitment by the county's designated counsel (Welf. & Inst. Code, § 6601, subd. (i));
4. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing (Welf. & Inst. Code, § 6602);
5. Preparation and attendance by the county's designated counsel and indigent defense counsel at trial (Welf. & Inst. Code, §§ 6603, 6604);
6. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the SVP (Welf. & Inst. Code, §§ 6605, former subds. (b)-(d), 6608, subds. (a) & (b), former subdivisions (c) & (d));
7. Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the SVP (Welf. & Inst. Code, §§ 6603, 6605, former subd. (d)); and

***204** 8. Transportation and housing for each potential SVP at a secured facility while the individual awaits trial on the SVP determination. (Welf. & Inst. Code, § 6602.)

*****59** The Department then began reimbursing counties in a manner consistent with the Commission's decision. For fiscal year 2012-2013, the state reimbursed counties approximately ****351** \$20.75 million to cover the cost of implementing the SVP mandate. The Department estimated the mandate costs for fiscal year 2013-2014 to be approximately \$21.79 million.

In January 2013, though, the Department sought to terminate these payments by requesting that the Commission adopt a new test claim under [Government Code section 17570](#). In the Department's view, the state mandate ended when the voters enacted Proposition 83 at the November 7, 2006, General Election. The Department argued that each of the state-mandated duties was now either "expressly included in" or "necessary to implement" Proposition 83, "a ballot measure approved by the voters in a statewide ... election." (Gov. Code, § 17556, subd. (f).)

It is true that Proposition 83 included several of the statutory mandates on which the Commission's 1998 ruling relied. But as the parties concede, these provisions were reprinted in Proposition 83 solely because the California Constitution requires that "[a] section of a statute may not be amended unless the section is re-enacted as amended." (Cal. Const., art. IV, § 9.) Both parties admit Proposition 83 made no changes to many of the provisions the Commission had identified as imposing state-mandated duties on local governments and revised the remainder only in nonsubstantive ways. Nonetheless, on July 26, 2013, the Commission determined that the Department had made a sufficient showing of a " 'subsequent change in law' " within the meaning of [Government Code section 17570, subdivision \(a\)\(2\)](#) to raise a substantial possibility of prevailing at the second hearing. (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (July 26, 2013), p. 13 <<https://csm.ca.gov/matters/4509/doc55.pdf>> [as of November 15, 2018]; see [Cal. Code Regs., tit. 2, § 1190.5, subd. \(a\)\(1\)](#).) The Commission deemed it "irrelevant ... whether Proposition 83 made any *substantive* changes to the SVP code sections" and instead found it sufficient that the "ballot measure expressly includes some of the same activities as the test claim statutes that were found to impose a reimbursable mandate" in the Commission's 1998 ruling. (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (July 26, 2013), *supra*, at p. 18, italics added.)

Following the second hearing, the Commission determined that Proposition 83 had transformed six of the eight listed local government duties (and part ***205** of a seventh) from reimbursable state-mandated activities into nonreimbursable voter-mandated activities. Once again, the Commission deemed it "irrelevant ... whether Proposition 83 made any substantive changes at all to the SVP code sections." (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (Dec. 6, 2013), *supra*, at p. 39.) What proved pivotal for the Commission instead was "that Proposition 83 amended and reenacted wholesale most of the code sections that gave rise to the

mandated activities found in the [original] test claim.” (*Ibid.*)

Accordingly, local government duties 1, 2, 3, 6, and part of 7, which were “expressly included” in the ballot measure, were no longer reimbursable. (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (Dec. 6, 2013), *supra*, at pp. 23-25.) The Commission further reasoned that local government duty 5 (the preparation and attendance at trial by the county’s designated counsel and appointed counsel for indigents), the remainder of local government duty 7 (the retention of necessary experts for trial), and part of local government ***60 duty 8 (transportation and housing of SVP while awaiting trial) were “required in order to satisfy due process.” (*Id.* at p. 34; see *id.* at pp. 36-37.) Because these activities were “necessary to implement” the ballot measure, they likewise were no longer reimbursable. (*Id.* at pp. 36-37.) Only local government duty 4 (preparation and attendance by counsel at a probable cause hearing) and the remainder of local government duty 8 (transportation to and from a state-mandated probable cause hearing) were deemed by the Commission to be reimbursable costs: the statutory provisions underlying these activities were neither reenacted in the ballot measure nor required by due process. (*Id.* at pp. 33, 37, 54-55.) In declaring that local government duties 1, 2, 3, 5, 6, 7, and part of 8 were no longer state mandates, the Commission did not rely on — let alone discuss — the theory that these **352 duties might be nonreimbursable because they are necessary to implement Proposition 83’s expanded definition of an SVP.²

The Counties responded by filing a petition for a writ of administrative mandate and a complaint for declaratory relief. The writ petition sought an order setting aside the Commission’s statements of decision issued on July 26, 2013, and December 6, 2013. The complaint asked for a declaration that *206 Government Code sections 17556, subdivision (f) and 17570 are unconstitutional and that the costs incurred by localities in carrying out the SVPA continue to be reimbursable. The trial court denied relief. The court reasoned that Proposition 83 broadened the definition of an SVP and thus “was more than a mere restatement” of existing law. Even if Proposition 83 were construed as a “simple reenactment,” though, “the effect of voter-approval cannot be ignored as transforming certain requirements of the Act into voter-approved mandates.” The court also rejected the Counties’ challenges to the constitutionality of the two statutes.

The Court of Appeal reversed and remanded the matter to the Commission for reconsideration. It found that the statutory duties identified in the Commission’s 2013 test

claim ruling were neither necessary to implement nor expressly included in Proposition 83 “[b]ecause the duties imposed by the statutes at issue were not affected by Proposition 83.” (*County of San Diego, supra*, 7 Cal.App.5th at p. 34, 212 Cal.Rptr.3d 259.) The court declined to accord any significance to the ballot measure’s expanded definition of an SVP (see fn. 2, *ante*) because the Commission’s 1998 decision had previously concluded that the definition set forth in [Welfare and Institutions Code section 6600](#) “was not a basis for any of the duties for which the Counties sought reimbursement.” (*County of San Diego, supra*, at p. 36, 212 Cal.Rptr.3d 259.)

We granted the State respondents’ petition for review to consider whether Proposition 83, by amending and reenacting provisions of the SVPA, constituted a “subsequent change in law” sufficient to modify the Commission’s prior decision, which directed the State of California to ***61 reimburse local governments for the costs of implementing the SVPA. ([Gov. Code, § 17570, subd. \(b\).](#))

II.

^[3]To resolve the question before us, we must consider four distinct legal principles. First, the state must reimburse local governments for the costs of discharging mandates imposed by the Legislature. ([Cal. Const., art. XIII B, § 6, subd. \(a\).](#)) Second, this reimbursement requirement does not apply to those activities that are necessary to implement, or are expressly included in, a ballot measure approved by the voters. ([Gov. Code, § 17556, subd. \(f\).](#)) Third, a statute must be reenacted in full as amended if any part of it is amended. ([Cal. Const., art. IV, § 9.](#)) And fourth, the Legislature is prohibited from amending an initiative statute unless the initiative itself permits amendment. (*Id.*, art. II, § 10, subd. (c).) The determination whether the statutes at issue here impose a state mandate — and thus require reimbursement — is a question of law we review independently. (See *207 [Department of Finance v. Commission on State Mandates](#) (2016) 1 Cal.5th 749, 762, 207 Cal.Rptr.3d 44, 378 P.3d 356; [County of San Diego v. State of California](#) (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

A.

[4] [5] We begin with the requirement that the state reimburse local governments for costs incurred when the state enlists their assistance in implementing a state program. (See *Cal. Const., art. XIII B, § 6.*) The voters ***353 added this requirement to the state Constitution soon after enacting Proposition 13 (*Cal. Const., art. XIII A*), a measure that “severely restricted the taxing powers of local governments.” (*County of Fresno v. State* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235.) The purpose of *article XIII B, section 6*³ was to prevent the state from unfairly shifting the costs of government onto local entities that were ill-equipped to shoulder the task. (*County of Fresno*, at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) As a result, the state now, with certain exceptions, must “ ‘pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.’ ” (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

[6] [7] *Government Code section 17556* outlines six circumstances where duties imposed by statute on local governments are not deemed “costs mandated by the state.” Among these is the circumstance where “[t]he statute ... imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” (§ 17556, subd. (f).) In other words, the state must reimburse local governments for mandates imposed by the Legislature, but not for mandates imposed by the voters themselves through an initiative. (See *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1207, 90 Cal.Rptr.3d 501.) Where the Legislature cannot use the ordinary legislative process to amend or alter duties imposed by the voters (see *Cal. Const., art. II, § 10, subd. (c)*), it can no longer be reasonably characterized as the source of those duties.

***62 [8] The question left unresolved by these provisions is what, precisely, qualifies as a mandate imposed by the voters. *Government Code section 17556, subdivision (f)* exempts from reimbursement only those “duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters.” The boundaries of this subdivision depend, then, on the definition of a “ballot measure” in *section 17556*. Our reading of the *208 provision’s text, the overall statutory structure, and related constitutional provisions persuades us that not every single word printed in the body of an initiative falls within the scope of the statutory terms “expressly included in ... a ballot measure.” (§ 17556, subd. (f); see *People v. Chavez* (2018) 4 Cal.5th 771, 779, 231 Cal.Rptr.3d 634, 415 P.3d 707.) Discerning the extent of

the state’s obligation to reimburse local governments for existing state mandates in the wake of a voter-approved initiative that includes the text of a previously enacted law — and the Legislature’s power to amend any of its provisions — takes a more nuanced analysis.

[9] [10] Many voter initiatives (such as Proposition 83) amend existing statutory sections. Among these are statutory sections that have already been determined to impose reimbursable duties on local governments. When an existing statutory section is amended — even in the tiniest part — the state Constitution requires the entire section to be reenacted as amended. (*Cal. Const., art. IV, § 9*; see *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 990, 9 Cal.Rptr.2d 102, 831 P.2d 327 (*Yoshisato*) [“The effect of this section is that voters considering an initiative ... that seeks to make discrete amendments to selected provisions of an existing statute, are forced to reenact the entire statute as amended in order to accomplish the desired amendments”].) The rationale for compelling reenactment of an entire statutory section when only a part is being amended is to avoid “ ‘the enactment of statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect’ ” and the risk that “ ‘the public, from the difficulty of making the necessary examination and comparison, failed to become appr[]ised of the changes made in the laws.’ ” (*Hellman v. Shoulters* (1896) 114 Cal. 136, 152, 45 P. 1057.) Consequently, a substantial part of ***354 almost any statutory initiative will include a restatement of existing provisions with only minor, nonsubstantive changes — or no changes at all.

Proposition 83 is an example. It reenacted verbatim subdivision (i) of *Welfare and Institutions Code section 6601*, which the Commission’s 1998 ruling had identified as the source of local government duties 1, 2, and 3. The initiative made changes to individual subdivisions of *Welfare and Institutions Code sections 6605* and *6608*, which the Commission’s 1998 ruling had identified as the source for local government duties 6 and part of 7. But the minor changes to the procedures governing the filing of a petition for conditional release had no effect on those mandated duties. The ballot measure made only one minor, nonsubstantive change to *section 6608, subdivision (a)* but otherwise restated the statute verbatim. The voters also reenacted verbatim former *subdivisions (c) and (d) of section 6605* and, while amending former subdivision (b), made no changes to the mandated duties. Whatever else Proposition 83 accomplished, it effectively left undisturbed these test claim statutes and the various mandates imposed therein.

*209 The Commission nonetheless found the mere

existence of Proposition 83 sufficient to transfer fiscal responsibility for the costs of these duties from the state to ***63 county governments. In the Commission’s view, “the extent and degree of substantive amendments” made by a ballot measure are “immaterial” to the source of the mandate. (Cal. Com. on State Mandates, Statement of Decision No. 12-MR-01 (Dec. 6, 2013), *supra*, at p. 39.) The Commission believed “it is irrelevant to the analysis ... whether Proposition 83 made *any substantive changes at all* to the SVP code sections.” (*Ibid.*, italics added.) What mattered instead, from its perspective, is that “Proposition 83 amended and reenacted wholesale most of the code sections that gave rise to the mandated activities found in the [1998] test claim.” (*Ibid.*) Relying simply on the fact that certain SVPA provisions were restated in Proposition 83, the Commission concluded that local government duties 1, 2, 3, and 6 (as well as part of 7) were “expressly included in” a ballot measure within the meaning of [Government Code section 17556, subdivision \(f\)](#).

We conclude that the Commission’s approach is at odds with the constitutional requirement that the state reimburse local governments for the costs of complying with state mandates. (Cf. *Yoshisato*, *supra*, 2 Cal.4th at p. 989, 9 Cal.Rptr.2d 102, 831 P.2d 327 [rejecting an interpretation that “assigns undue import to the technical procedures for amending statutes”].) If the term “ballot measure” in [Government Code section 17556](#) were defined as automatically including every provision subject to constitutionally compelled restatement in an initiative, it would sweep in vast swaths of the California Code. Neither the Commission nor the other State respondents point to anything indicating that the Legislature intended to terminate reimbursement for existing state mandates simply because the provisions creating the mandate happened to be restated without change in an initiative statute.

[11]According to pivotal significance to a mere technical restatement also would prove difficult to reconcile with [Government Code section 9605](#). What this statute provides is that “[w]here a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment” (Gov. Code, § 9605; see *People v. Cooper* (2002) 27 Cal.4th 38, 44, fn. 4, 115 Cal.Rptr.2d 219, 37 P.3d 403 [where voter-approved amendments “did not substantively change the credits provision” in existing law, “there were no reenactments”].) As we have long held, “[t]he portions

of the amended section which are copied without change are not to be considered as having been repealed and again re-enacted, but to have been the law all along.’ ” (*Vallejo etc. R. R. Co. v. Reed Orchard Co.* (1918) 177 Cal. 249, 255, 170 P. 426.) Statutory provisions that are not actually reenacted and are instead considered to “‘have been the law all along’ ” *210 (*ibid.*) cannot fairly be said to be part of a ballot measure **355 within the meaning of [Government Code section 17556, subdivision \(f\)](#).

[12]Nor does the Commission persuasively reconcile a sweeping transfer of financial responsibility whenever a ballot measure happens to restate a provision containing a state mandate with the voters’ intended purpose in [California Constitution, article IV, section 9](#). The purpose of the ban on unfunded mandates was to protect the strapped budgets of local governments in the wake of Proposition 13. (See *Ballot Pamp.*, Gen. Elec. (Nov. 6, 1979) argument in favor of Prop. 4, p. 18 [“this measure WILL NOT allow the state ***64 government to force programs on local governments without the state paying for them”]; cf. *California School Boards Assn. v. State of California*, *supra*, 171 Cal.App.4th at p. 1215, 90 Cal.Rptr.3d 501 [language of former [section 17556, subdivision \(f\)](#) “must be limited” because it “so clearly contravenes the intent of the voters in passing Proposition 4”].) We have no basis to presume such stark fiscal effects would arise from these provisions’ compelled restatement, when those provisions are conceded to be bystanders relative to the changes wrought by a voter initiative. (See *County of Sacramento v. Pfund* (1913) 165 Cal. 84, 88, 130 P. 1041 [“to construe a statute amended in certain particulars as having been wholly re-enacted as of the date of the amendment, is to do violence to the code and all canons of construction”].)

By treating those untouched statutory bystanders no differently from materially changed or newly added provisions, the Commission’s approach leads to results “that no one would consider reasonable.” (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 650, 3 Cal.Rptr.3d 228, 73 P.3d 1205; see *People v. Clark* (1990) 50 Cal.3d 583, 605, 268 Cal.Rptr. 399, 789 P.2d 127.) The Commission’s view implies that merely restating a state-mandated duty in a ballot measure to renumber the section, correct punctuation or grammar errors, or substitute gender-neutral language (see, e.g., *Yoshisato*, *supra*, 2 Cal.4th at pp. 983, 985, 9 Cal.Rptr.2d 102, 831 P.2d 327) automatically relieves the state of its obligation to reimburse local governments for performing their assigned role. Ironically, such wholesale reallocation of financial burdens would occur under the Commission’s theory even if nothing in the initiative changed any

activities the local governments were required to perform. Conversely, if the local government duties listed here happened to appear in a completely separate statute not subject to technical reenactment rather than appearing in the section Proposition 83 amended in other respects, they would have remained state mandates. The mere happenstance that the mandated duties were contained in test claim statutes that were amended in other respects not clearly germane to any of the duties — and thus had to be reenacted in full under the state Constitution — should not in itself diminish their character as state mandates.

*211 So it is telling that the State respondents conspicuously avoid embracing the full scope of the Commission’s reasoning. What they argue instead is that the compelled reenactment of the test claim statutes transformed the state mandate into a voter-imposed mandate because the voters *simultaneously* limited the Legislature’s ability to revise or repeal the test claim statutes. They point to Proposition 83’s amendment clause, which provides in relevant part: “The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by a majority of each house thereof.” (Voter Information Guide, Gen. Elec. (Nov. 7, 2006) text of Prop. 83, § 33, p. 138 (Voter Guide).) In their view, these provisions no longer qualify as legislatively imposed mandates because the Legislature now lacks the power to amend or repeal these test claim statutes using the ordinary legislative process.

^[13]We disagree. The strict limitation on amending initiatives generally — and ***65 the relevance of the somewhat liberalized constraints imposed by Proposition 83’s amendment **356 clause — derive from the [state constitution. Article II, section 10](#), subdivision (c) of the California Constitution provides that an initiative statute may be amended or repealed only by another voter initiative, “unless the initiative statute permits amendment or repeal without the electors’ approval.” The evident purpose of limiting the Legislature’s power to amend an initiative statute “ ‘is to “protect the people’s initiative powers by precluding the Legislature from undoing what the people have done, without the electorate’s consent.” ’ ” (*Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597, 96 Cal.Rptr.3d 379 (*Shaw*)). But we have never had occasion to consider precisely “what the people have done” and what qualifies as “undoing” (*ibid.*) when the

subject is a statutory provision whose reenactment was constitutionally compelled under [article IV, section 9 of the Constitution](#).

The State respondents’ argument depends on one crucial assumption: that because of [article II, section 10, subdivision \(c\) of the state Constitution](#), none of the technically restated provisions may be amended, except as provided in the initiative’s amendment clause. Yet the parties and amicus curiae California State Association of Counties and League of California Cities have identified at least *nine* legislative amendments to statutes technically restated in Proposition 83 that — under the view espoused by State respondents — would be in violation of the initiative’s amendment clause. (See Voter Guide, *supra*, text of Prop. 83, § 33.) These amendments *212 contained provisions that neither expanded the scope of the initiative, increased the punishment, nor garnered a two-thirds vote of each house. (Stats. 2011, ch. 15, § 443 [amending [Pen. Code, § 667.5, subd. \(a\)](#), which was technically restated in § 9 of Prop. 83]; Stats. 2011, ch. 15, § 468 [amending [Pen. Code, § 3000, subd. \(b\)](#), which was technically restated in § 17 of Prop. 83]; Stats. 2011, ch. 15, § 472 [amending [Pen. Code, § 3001, subd. \(a\)](#), which was technically restated in § 19 of Prop. 83]; Stats. 2011, ch. 15, § 473 [amending [Pen. Code, § 3003, subd. \(a\)](#), which was technically restated in § 20 of Prop. 83]; Stats. 2011-2012, 1st Ex. Sess. 2011, ch. 12, § 10 [amending [Pen. Code, § 667.5, subd. \(b\)](#), which was technically restated in § 9 of Prop. 83]; Stats. 2012, ch. 24, § 139 [amending [Welf. & Inst. Code, § 6601](#), which was technically restated in § 26 of Prop. 83]; Stats. 2012, ch. 24, § 143 [amending [Welf. & Inst. Code, § 6604](#), which was technically restated in § 27 of Prop. 83]; Stats. 2012, ch. 24, § 144 [amending [Welf. & Inst. Code, § 6605](#), which was technically restated in § 29 of Prop. 83]; Stats. 2012, ch. 24, § 146 [amending [Welf. & Inst. Code, § 6608](#), which was technically restated in § 30 of Prop. 83].) If the State respondents are correct that *any* amendment to a provision that happens to have been technically restated in a ballot measure must follow the amendment process provided in the initiative, then all of these amendments would be invalid.

The State respondents take a narrow view of the Legislature’s power to amend a statutory provision when its reenactment in a ballot measure was compelled by the state Constitution. But they concede only “limited authority” supports this view. Indeed, the lone case cited by the State respondents is *Shaw*, but that case analyzed a legislative amendment aimed at the heart of a voter initiative, not a bystander provision that had been only technically restated. At issue in *Shaw* was Proposition 116, a 1990 voter initiative that in relevant part amended

Revenue and Taxation Code section 7102, subdivision (a)(1) to direct ***66 that a portion of sales and use taxes related to motor vehicle fuel (hereafter spillover gas tax revenue) be transferred to the Public Transportation Account (PTA), which was newly designated as “*a trust fund*” within the State Transportation Fund. (*Shaw, supra*, 175 Cal.App.4th at pp. 588-589, 96 Cal.Rptr.3d 379.) The trust fund was to be used “*only for transportation planning and mass transportation purposes.*” (*Id.* at p. 589, 96 Cal.Rptr.3d 379.) Proposition 116 also added section 7102, subdivision (d), which allowed the Legislature to amend section 7102 by means of a statute passed with a two-thirds vote of both houses, but only “*if the statute is consistent with, and furthers the purposes of, this section.*” (*Shaw*, at p. 590, 96 Cal.Rptr.3d 379.) Notwithstanding these provisions, the Legislature in 2006 and 2007 further amended **357 section 7102, subdivision (a)(1) to qualify the required transfer of spillover gas tax revenue with the words “*except as modified as follows*” (*Shaw*, at p. 601, 96 Cal.Rptr.3d 379) and added other provisions that “[e]ssentially ... appropriated money that was otherwise directed to the PTA to various other government sources and *213 obligations.” (*Shaw*, at p. 592, 96 Cal.Rptr.3d 379; see *id.* at p. 602, 96 Cal.Rptr.3d 379.) The new subdivisions added by the Legislature went so far as to order these diversions from the PTA “notwithstanding any other provision of this paragraph or any other provision of law.” (§ 7102, subd. (a)(1)(G) & (H).)

As the Court of Appeal readily observed, the Legislature’s 2007 amendment was suspect for a specific reason: it sought to undo the very protections the voters had enacted in Proposition 116. (*Shaw, supra*, 175 Cal.App.4th at pp. 597-598, 96 Cal.Rptr.3d 379.) Unlike Proposition 83, Proposition 116 had not merely restated a key provision without change. Rather, Proposition 116 had added language to Revenue and Taxation Code section 7102, subdivision (a)(1) designating the PTA as “*a trust fund,*” and elsewhere stated that the funds were available “*only for transportation, planning and mass transportation purposes.*” (*Shaw*, at p. 589, 96 Cal.Rptr.3d 379.) So when the Legislature — a decade and seven years later — sought to undermine the voter-created trust fund by adding new provisions to divert those funds from uses the voters had previously designated, it was not amending a provision that had merely been technically restated by the voters. (*Shaw*, at p. 597, 96 Cal.Rptr.3d 379; see *id.* at p. 601, 96 Cal.Rptr.3d 379 [“The voters’ intent to preserve spillover gas tax funding of the PTA would be frustrated if the Legislature could amend section 7102, subdivision (a)(1) to modify the amount of spillover gas tax revenue making it to the PTA.”].) Instead, the 2007 amendment sought to

alter the voters’ careful handiwork, both the text and its intended purpose, and therefore was required to comply with the limitations in the initiative’s amendment clause. (*Id.* at pp. 597-598, 96 Cal.Rptr.3d 379.) To grant the Legislature free rein to tinker with spillover gas tax revenue and thereby undermine the PTA’s integrity would have defeated a core purpose of Proposition 116 — “to convert the PTA to a trust fund dedicated to supporting transportation planning and mass transportation projects, and to preserve the funding of the PTA for such projects with spillover gas tax revenue according to the formula specified in section 7102, subdivision (a)(1).” (*Shaw*, at p. 601, 96 Cal.Rptr.3d 379.)

By contrast, nothing in Proposition 83 focused on duties local governments were already performing under the SVPA. No provision amended those duties in any substantive way. Nor did any aspect of the initiative’s structure or other indicia of its ***67 purpose suggest that the listed duties merited special protection from alteration by the Legislature. According to the Voter Guide, the intended purpose of Proposition 83 was to increase penalties for violent and habitual sex offenders; prohibit registered sex offenders from residing within 2,000 feet of a school or park; require lifetime electronic monitoring of felony registered sex offenders; expand the definition of an SVP; and change the then-existing two-year commitment term for SVPs to an indeterminate commitment. (Voter Guide, *supra*, Official Title and Summary of Prop. 83, p. 42.) Indeed, no indication appears in the text of the initiative, nor in the ballot pamphlet, to suggest voters would have reasonably understood they *214 were restricting the Legislature from amending or modifying any of the duties set forth in the test claim statutes. Nor is an overbroad construction of article II, section 10 of the California Constitution necessary to safeguard the people’s right of initiative. (See *Bartosh v. Board of Osteopathic Examiners* (1947) 82 Cal.App.2d 486, 491-496, 186 P.2d 984.) To the contrary: Imposing such a limitation as a matter of course on provisions that are merely technically restated would unduly burden the people’s willingness to amend existing laws by initiative.

[14] [15] A more prudent conclusion is to assign somewhat more limited scope to the state constitutional prohibition on legislative amendment of an initiative statute. When technical reenactments are required under article IV, section 9 of the Constitution — yet involve no substantive change in a given statutory provision — the Legislature in **358 most cases retains the power to amend the restated provision through the ordinary legislative process. This conclusion applies *unless* the provision is integral to accomplishing the electorate’s goals in enacting the

initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute. This interpretation of article II of the Constitution is consistent with the people's precious right to exercise the initiative power. (See *Legislature v. Eu* (1991) 54 Cal.3d 492, 501, 286 Cal.Rptr. 283, 816 P.2d 1309.) It also comports with the Legislature's ability to change statutory provisions outside the scope of the existing provisions voters plausibly had a purpose to supplant through an initiative. (See *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691, 97 Cal.Rptr. 1, 488 P.2d 161.) We therefore hold that where a statutory provision was only technically reenacted as part of other changes made by a voter initiative *and* the Legislature has retained the power to amend the provision through the ordinary legislative process, the provision cannot fairly be considered "expressly included in ... a ballot measure" within the meaning of [Government Code section 17556, subdivision \(f\)](#).⁴

^[16]With that in mind, we turn to the statutory provisions identified by the Commission as the source for local government duties 1, 2, 3, 6, and part of 7 — i.e., [Welfare and Institutions Code sections 6601, subdivision \(i\), 6605, former subdivisions \(b\)-\(d\), and 6608, subdivisions \(a\) and \(b\) and former subdivisions \(c\) and \(d\)](#). The State respondents do not dispute that each of these provisions was technically restated in Proposition 83 under constitutional compulsion. They offer no reason — putting aside for the moment the expanded SVP definition — why these restated provisions should be deemed integral to accomplishing the initiative's goals. Nor have they identified any basis for believing that *****68** it was within the scope of the voters' intended ***215** purpose in enacting the initiative to limit the Legislature's capacity to alter or amend these provisions. The Commission therefore erred in concluding that those provisions were expressly included in a ballot measure approved by the voters merely because they were restated in the initiative's text.

B.

^[17]Similar flaws afflict the Commission's analysis of local government duties 5, 7, and part of 8, which derive from [Welfare and Institutions Code sections 6602, 6603, 6604, and 6605, former subdivision \(d\)](#). The Commission erred when it concluded that these activities were expressly included in the ballot measure simply because Proposition

83 had technically restated the applicable provisions of [sections 6604 and 6605](#). For the reasons stated below, the Commission also erred in concluding that [sections 6602 and 6603](#) were "necessary to implement" Proposition 83.

The Commission's conclusion was based on the theory that [Welfare and Institutions Code sections 6602 and 6603](#) were indispensable to the implementation of *other* provisions that — according to the Commission — were "expressly included" in Proposition 83. But we have determined that those provisions were *not* part of the "ballot measure" for purposes of [Government Code section 17556, subdivision \(f\)](#). And while Proposition 83 technically reenacted a provision of existing law stating that "[t]he rights, requirements, and procedures set forth in [Section 6603](#) shall apply to all commitment proceedings" ([Welf. & Inst. Code, § 6604.1, subd. \(b\)](#)), this did not make [Welfare and Institutions Code section 6603](#) "necessary to implement" the ballot measure, either. The question here is not whether the protections in that section — i.e., trial by jury, appointed counsel, assistance of experts — are required by due process. The critical question is instead whether the SVP civil commitment program, which triggers those procedures, is mandated by the state or by the voters.

We considered an analogous situation in ****359** *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*). There, we considered whether the costs associated with mandatory expulsion hearings for students found to be in possession of firearms at school (see [Ed. Code, § 48915, former subd. \(b\); Stats. 1993, ch. 1256, § 2, pp. 7286-7287](#)) were a reimbursable state mandate. The Commission argued that they were not, pointing out that most or all of the costs associated with an expulsion hearing were required by the federal due process clause. (*San Diego Unified, supra*, 33 Cal.4th at pp. 879-880, 16 Cal.Rptr.3d 466, 94 P.3d 589; see [Gov. Code, § 17556, subd. \(c\)](#).) We disagreed. Federal law, at the time, did not mandate expulsion for possessing a firearm at school. (*San Diego Unified, at p. 881, 16 Cal.Rptr.3d 466, 94 P.3d 589*.) While federal due process did afford certain protections whenever ***216** an expulsion hearing was held, it did not require "that any such expulsion recommendation be made in the first place." (*Ibid.*) Because it was state law — and not due process — that required school districts to undertake an expulsion hearing in the first place, we held that the mandatory expulsion hearing costs were triggered by a state mandate and were fully reimbursable. (*Id. at pp. 881-882, 16 Cal.Rptr.3d 466, 94 P.3d 589*.) Similarly, here, federal law does not require any inmate be civilly committed as an SVP. That mandate comes from state law.

***69 Here again, the State respondents avoid defending the Commission’s reasoning. Instead, they rely on the expanded definition of a “[s]exually violent predator” in Proposition 83. (Voter Guide, *supra*, text of Prop. 83, § 24, p. 135.) As they point out, the voters broadened the definition of an SVP within the meaning of [Welfare and Institutions Code section 6600](#) in two ways. First, they reduced the required number of victims, so that an offender need only have been “convicted of a sexually violent offense against *one* or more victims,” instead of two or more victims. (*Ibid.*; see [Welf. & Inst. Code, § 6600, subd. \(a\)\(1\)](#).) Second, the voters eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction. (Voter Guide, *supra*, text of Prop. 83, § 24, p. 136; [Welf. & Inst. Code, § 6600, subd. \(g\)](#).) The State respondents contend that the specified local government duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform *any* duties for this class of offenders until the voters by initiative expanded the definition of an SVP.

The Court of Appeal chose to dispose of this argument in a single sentence: “The Commission’s 1998 decision ... concluded that [Welfare and Institutions Code section 6600](#) was not a basis for any of the duties for which the Counties sought reimbursement.” (*County of San Diego, supra*, 7 Cal.App.5th at p. 36, 212 Cal.Rptr.3d 259.) The statement is true, but only to a limited extent. The 1998 decision, which purported to address [Welfare and Institutions Code sections 6250 and 6600 through 6608](#), *did* state that “[t]he Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.” (Cal. Com. on State Mandates, Statement of Decision No. CSM-4509, *supra*, at p. 12.)

Yet it would be misleading to suggest that [Welfare and Institutions Code section 6600](#) was thereby rendered irrelevant to the duties set forth in the test claim statutes. None of the specified local government duties is triggered until an inmate is identified as someone who may be an SVP. (See §§ 6601, 6603, 6604, 6605, 6608.) Although the SVP definition does not *itself* impose any particular duties on local governments, it is necessarily incorporated into each of the listed activities. Indeed, whether a county has a duty to act (and, if so, *217 what it must do) depends on the SVP definition. (See Voter Guide, *supra*, analysis of Prop. 83 by Legis. Analyst, p. 44 [“This measure generally makes more sex offenders eligible for an SVP commitment”]; cf. *San Diego Unified, supra*, 33 Cal.4th at p. 884, 16 Cal.Rptr.3d 466, 94 P.3d 589 [acknowledging that changes in federal law concerning

mandatory expulsion for firearm possession “may lead to a different conclusion” as to whether expulsion hearings remain a state mandate in future years]; Cal. Com. on State Mandates, Statement of Decision No. 01-TC-18 (May 20, 2011), p. 39 <<https://www.csm.ca.gov/decisions/052011sod.pdf>> **360 [as of November 15, 2018] [concluding that changes in federal law concerning mandatory expulsion for firearm possession made the associated hearing costs a federal mandate].) When more people qualify as potential SVPs, a county must review more records. It must file more commitment petitions, and conduct more trials.⁵ One can ***70 imagine that if the roles were reversed — i.e., if the Legislature expanded the scope of a voter-created SVP program — the Counties would be claiming that the burdens imposed by the expanded legislative definition constituted a state mandate.

[18]Unfortunately, the Commission never considered whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. Its ruling granting the State respondents’ request for mandate redetermination instead rested entirely on grounds that we now disapprove. Moreover, the parties admit — and the Court of Appeal found — that the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments. (See *County of San Diego, supra*, 7 Cal.App.5th at p. 36, fn. 14, 212 Cal.Rptr.3d 259; cf. *San Diego Unified, supra*, 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589 [additional state statutory protections that were “incidental” to federal due process requirements, “producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under [Government Code section 17556, subdivision \(c\)](#)”].) Under the circumstances, we find it prudent to remand the matter to the Commission to enable it to address these arguments in the first instance. (See *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at p. 837, 244 Cal.Rptr. 677, 750 P.2d 318; *California School Boards Assn. v. State of California, supra*, 171 Cal.App.4th at p. 1217, 90 Cal.Rptr.3d 501.)

*218 III.

Constitutional requirements governing matters such as

voter initiatives and the Legislature's financial responsibility to local governments must be read in context. When a ballot initiative is used to amend any part of an existing statutory section, the California Constitution requires that the initiative include the text of the entire statutory section to enable voters to understand the context of the proposed change. (Cal. Const., art. IV, § 9.) But this requirement is a modest means of informing voters about the proposed change by ensuring there is a straightforward before-and-after comparison of the statutory text. Neither by its terms nor by implication does it prevent a future Legislature from making appropriate amendments to the provisions that are merely technically restated in a ballot measure. (See Cal. Const., art. II, § 10, subd. (c).) Likewise, mere technical restatements do not necessarily transform existing state mandates into voter-imposed mandates. (See Gov. Code, § 17556, subd. (f).)

Because the Commission erred in concluding otherwise, we affirm the judgment of the Court of Appeal insofar as it reversed the judgment of the trial court. We remand the matter to the Court of Appeal, so it can direct the trial court to modify its judgment as follows: the trial court shall issue a writ of mandate directing the Commission to set aside the decisions challenged in this action and to

reconsider the test claim in a manner consistent with this opinion.

We Concur:

CANTIL-SAKAUYE, C. J.

CHIN, J.

CORRIGAN, J.

LIU, J.

KRUGER, J.

MEEHAN, J.*

All Citations

6 Cal.5th 196, 430 P.3d 345, 240 Cal.Rptr.3d 52, 18 Cal. Daily Op. Serv. 10,887, 2018 Daily Journal D.A.R. 10,985

Footnotes

- 1 Under [Government Code section 17557, subdivision \(e\)](#), a test claim submitted on or before June 30 following a fiscal year establishes "eligibility for reimbursement for that fiscal year."
- 2 Proposition 83 expanded the definition of "sexually violent predator" to include those who have a diagnosed mental disorder rendering them likely to engage in sexually violent behavior and have been convicted of a sexually violent offense "against *one* or more victims." ([Welf. & Inst. Code, § 6600, subd. \(a\)\(1\)](#), italics added.) Prior to Proposition 83, an SVP included only those who had been convicted of a qualifying offense "against *two* or more victims." ([Welf. & Inst. Code, § 6600](#), former subd. (a)(1), italics added; Stats. 2006, ch. 337, § 53, p. 2661.) Prior law also permitted only *one* prior juvenile adjudication of a sexually violent offense to be used as a qualifying conviction ([§ 6600](#), former subd. (g); Stats. 2006, ch. 337, § 53, p. 2661), but Proposition 83 removed that limitation. ([§ 6600, subd. \(g\)](#).)
- 3 [Article XIII B, section 6, subdivision \(a\) of the California Constitution](#) provides in relevant part that "[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service"
- 4 We disapprove [Shaw v. People ex rel. Chiang, supra, 175 Cal.App.4th 577, 96 Cal.Rptr.3d 379](#), to the extent it is inconsistent with this opinion.
- 5 The ballot pamphlet said as much: "This measure would also affect state and local costs associated with court and jail operations. For example, the additional SVP commitment petitions resulting from this measure would increase court costs for hearing these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in county jail facilities." (Voter Guide, *supra*, analysis of Prop. 83 by Legis. Analyst, p. 45.)
- * Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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33 Cal.App.5th 174
Court of Appeal, Third District, California.

PARADISE IRRIGATION DISTRICT et al.,
Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES,
Defendant and Respondent;

Department of Water Resources et al., Real Parties
in Interest and Respondents.

C081929

Filed 3/20/2019

Synopsis

Background: After Commission on State Mandates denied test claims for subvention by water and irrigation districts, the Superior Court, Sacramento County, No. 34201580002016, [Timothy M. Frawley, J.](#), dismissed districts' petition for writ of mandate. Districts appealed.

[Holding:] On rehearing, the Court of Appeal, [Hoch, J.](#), held that water and irrigation districts were not entitled to subvention with regard to costs of complying with Conservation Act requirements.

Affirmed.

Opinion, [238 Cal.Rptr.3d 656](#), vacated.

West Headnotes (15)

- [1] **States**
🔑 State expenses and charges and statutory liabilities

“Subvention” refers to claims by local governments and agencies for reimbursement from the state for costs of complying with state mandates for which the mandate does not concomitantly provide funds to the local agency.

- [2] **Administrative Law and Procedure**
🔑 Review using standard applied below

Ordinarily, when the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same.

- [3] **Administrative Law and Procedure**
🔑 Construction, interpretation, or application of law in general
Administrative Law and Procedure
🔑 Review in general

Appellate courts independently review administrative decisions regarding conclusions as to the meaning and effect of constitutional and statutory provisions.

- [4] **Administrative Law and Procedure**
🔑 Deference to Agency in General
Administrative Law and Procedure
🔑 Circumstances or Time of Construction

Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court; depending on the context, it may be helpful, enlightening, even convincing, and it may sometimes be of little worth.

- [5] **Administrative Law and Procedure**
🔑 Deference to Agency in General

Considered alone and apart from the context and

circumstances that produce them, agency interpretations of statutes are not binding or necessarily even authoritative.

art. XIII D, § 5.

[6] **Municipal Corporations**
⚡ Limitations as to rate or amount, or property or persons taxable

The purpose of Proposition 13 is to cut local property taxes. Cal. Const. art. XIII A.

[7] **Municipal Corporations**
⚡ Limitation on use of funds or credit in general
Municipal Corporations
⚡ Submission to voters, and levy, assessment, and collection
States
⚡ Limitation of amount of indebtedness or expenditure

The Gann Limit, which restricts amounts state and local governments may appropriate and spend each year from proceeds of taxes, does not require voter approval for imposition of special assessments. Cal. Const. art. XIII B.

[8] **Municipal Corporations**
⚡ Limitation on use of funds or credit in general
States
⚡ Limitation of amount of indebtedness or expenditure

A preexisting special assessment is exempt from Gann Limit, which restricts amounts state and local governments may appropriate and spend each year from proceeds of taxes, if it is imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Cal. Const.

[9] **Water Law**
⚡ Necessity of voter approval
Water Law
⚡ Levy and assessment

The voter-approval requirement for new taxes imposed by Proposition 218 does not apply to levying fees for water service; instead, constitutional provision regarding new or increased fees expressly exempts water service charges from the voter-approval requirement that it imposes on all other fees and charges. Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 6.

[10] **Municipal Corporations**
⚡ Limitation on use of funds or credit in general
Water Law
⚡ Powers, proceedings and review
Water Law
⚡ Levy and assessment

Water and irrigation districts were not entitled to subvention with regard to costs of complying with Conservation Act requirements, despite fact that, under Proposition 218, a majority of property owners could protest a fee imposed by districts and prevent its imposition; existence of power-sharing arrangement between districts and voters and the possibility of a protest did not divest districts of authority to levy fees to pay for costs of complying with Conservation Act without prior voter approval. Cal. Const. art. XIII D, § 6; Cal. Gov't Code § 53755; Cal. Water Code §§ 22280, 35470.

[11] **Municipal Corporations**
⚡ Limitation on use of funds or credit in general

Taxation

🔑 **Constitutional Requirements and Restrictions**

Constitutional provision allowing a subvention of funds to reimburse local governments for the costs of state-mandates was not intended to reach beyond taxation. Cal. Const. art. XIII B.

The Court of Appeal would not take judicial notice of legislative history materials relating to special districts.

Witkin Library Reference: 9 [Witkin, Summary of Cal. Law \(11th ed. 2017\) Taxation, § 123](#) [Where Expenses Are Recoverable From Sources Other Than Taxes.]

[12] **Municipal Corporations**

🔑 **Nature and scope of power**

The inquiry into a local agency’s fee authority constitutes an issue of law rather than a question of fact; fee authority is a matter governed by statute rather than by factual considerations of practicality.

****770** APPEAL from a judgment of the Superior Court of Sacramento County, Timothy M. Frawley, Judge. Affirmed. (Super. Ct. No. 34201580002016)

Attorneys and Law Firms

MINASIAN, MEITH, SOARES, SEXTON & COOPER, [Dustin C. Cooper](#), Andrew J. McClure, Peter C. Harman, Oroville, for Paradise Irrigation District, South Feather Water & Power Agency, Richvale Irrigation District and Oakdale Irrigation District; SOMACH SIMMONS & DUNN, [Andrew M. Hitchings](#) and [Alexis K. Stevens](#), Sacramento, for Biggs-West Gridley Water District and Glenn-Colusa Irrigation District, Plaintiffs and Appellants.

Jennifer B. Henning for California State Association of Counties and The League of California Cities; LOZANO SMITH, [Sloan R. Simmons](#), [Anne L. Collins](#) and [Nicholas J. Clair](#), Sacramento, for California Special Districts Association, Association of California Water Agencies and California Association of Sanitation Agencies as Amici Curiae on behalf of Plaintiffs and Appellants.

[Camille Shelton](#), Sacramento, and Matthew B. Jones for Defendant and Respondent.

[Xavier Becerra](#), Attorney General, [Douglas J. Woods](#), [Thomas S. Patterson](#), Senior Assistant Attorneys General, [Marc A. LeForestier](#), [Tamar Pachter](#), Supervising Deputy Attorneys General and [Peter H. Chang](#), Deputy Attorney General for Real Parties in Interest and Respondents.

[13] **Water Law**

🔑 **Powers, proceedings and review**

Statutory authorization to levy fees, rather than practical considerations, conclusively determines whether the Water and Irrigation Districts are entitled to subvention.

[14] **Amicus Curiae**

🔑 **Powers, functions, and proceedings**

Amicus Curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered.

[15] **Evidence**

🔑 **Legislative proceedings and journals**

OPINION ON REHEARING

HOCH, J.

***180 **771** ^[1]This appeal focuses on circumstances in which local water and irrigation districts may be entitled to subvention for unfunded state mandates. “Subvention” refers to claims by local governments and agencies in California for reimbursement from the state for costs of complying with state mandates for which the mandate does not concomitantly provide funds to the local agency. (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 395, 69 Cal.Rptr.2d 231 (*Connell*).) In the event a local agency believes it is entitled to subvention for a new unfunded state mandate, the agency may file a “test claim” with the Commission on State Mandates (Commission). The Commission hears the matter and determines whether the statute or executive order constitutes an unfunded state mandate for which subvention is required.

Here, the Commission denied consolidated test claims for subvention by appellants Paradise Irrigation District (Paradise), South Feather Water & ***181** Power Agency (South Feather), Richvale Irrigation District (Richvale), Biggs-West Gridley Water District (Biggs), Oakdale Irrigation District (Oakdale), and Glenn-Colusa Irrigation District (Glenn-Colusa). We refer to appellants collectively as the Water and Irrigation Districts, except when addressing individual appellants’ separate claims. The Commission determined the Water and Irrigation Districts have sufficient legal authority to levy fees to pay for any water service improvements mandated by the Water Conservation Act of 2009 (Stats. 2009-2010, 7th Ex. Sess., ch. 4, § 1 (Conservation Act)). The trial court agreed and denied a petition for writ of mandate brought by the Water and Irrigation Districts.

On appeal, the Water and Irrigation Districts present a question left open by this court’s decision in *Connell*, *supra*, 59 Cal.App.4th 382, 69 Cal.Rptr.2d 231. *Connell* addressed the statutory interpretation of Revenue and Taxation Code section 2253.2 (Stats. 1982, ch. 734, § 10, pp. 2916-2917) that has been recodified in pertinent part without substantive change in Government Code section 17556 (added by Stats. 1984, ch. 1459, § 1, pp. 5113-5119). (*Connell*, at pp. 397-398 & fn. 16, 69 Cal.Rptr.2d 231.) Based on the statutory language, *Connell* held local water districts are precluded from subvention for state mandates to increase ****772** water purity levels insofar as the water districts have legal authority to recover the costs of the state-mandated program. (*Id.* at p. 401, 69 Cal.Rptr.2d 231.) In so holding, *Connell* rejected an argument by the Santa

Margarita Water District and three other water districts (collectively Santa Margarita) that they did not have the “practical ability in light of surrounding economic circumstances.” (*Id.* at p. 401, 69 Cal.Rptr.2d 231.) This court reasoned that crediting Santa Margarita’s argument “would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by [Santa Margarita], it would have used ‘reasonable ability’ in the statute rather than ‘authority.’ ” (*Ibid.*)

In *Connell*, *supra*, 59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, this court declined to consider a passing comment by Santa Margarita that the then-recent passage of Proposition 218 (as approved by voters Gen. Elec. Nov. 5, 1996, eff. Nov. 6, 1996 <<https://elections.cdn.sos.ca.gov/sov/1996-general/official-declaration.pdf>> [as of March 19, 2019], archived at <<https://perma.cc/F23E-P2KA>>) (Proposition 218) meant that “the authority of local agencies to recover costs for many services [is] impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees.” (*Connell*, at p. 403, 69 Cal.Rptr.2d 231.) This appeal addresses that issue by considering whether the passage of Proposition 218 changed the authority of water and irrigation districts to recover costs from their ratepayers so that unfunded state mandates for water service must now be reimbursed by the state.

***182** The Water and Irrigation Districts argue Proposition 218 removed their prerogative to impose fees because any new fees may be defeated by a majority of their water customers filing written protests. They also challenge the Commission’s ruling it lacked jurisdiction to consider reimbursement claims by Richvale and Biggs because those two districts have not shown they collect any taxes. In support of the Water and Irrigation Districts’ position, we have received and considered two amicus curiae briefs: one from the California State Association of Counties and League of California Cities (collectively the Counties and Cities), and one from the California Special Districts Association, Association of California Water Agencies, and California Association of Sanitation Agencies (collectively the Special Districts). We also have received briefing from real parties in interest, the Department of Finance and Department of Water Resources.

We affirm. The Water and Irrigation Districts possess statutory authority to collect fees necessary to comply with the Water Conservation Act. Thus, under Government Code section 17556, subdivision (d), subvention is not available to the Water and Irrigation

Districts. The Commission properly denied the reimbursement claims at issue in this case because the Water and Irrigation Districts continue to have legal authority to levy fees even if subject to majority protest of water and irrigation district customers. Under the guidance of the California Supreme Court's decision in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 211, 46 Cal.Rptr.3d 73, 138 P.3d 220 (*Bighorn*), we conclude that majority protest procedures are properly construed as a power-sharing arrangement between the districts and their customers, rather than a deprivation of fee authority.

BACKGROUND

The Water and Irrigation Districts' Test Claims

In 2011, the Water and Irrigation Districts filed a joint test claim with the **773 Commission. The Water and Irrigation Districts asserted the Conservation Act "imposes unfunded state mandates to conserve water and achieve water conservation goals on local public agencies that are 'urban retail water suppliers' and/or 'agricultural water suppliers.'" In 2013, Richvale and Biggs filed a second test claim asserting various regulations implementing the Conservation Act also constitute reimbursable state mandates. The Commission consolidated the test claims. After consolidating the test claims, the Commission determined Richvale and Biggs did not have standing to bring the second test claim. The Commission reasoned Richvale and Biggs are not "subject to the tax and spend limitations of articles XIII A and *183 B of the California Constitution"¹ because they are funded solely from service charges, fees, and assessments. Thereafter Oakdale Irrigation District and Glenn-Colusa Irrigation District substituted in as claimants for the second test claim.

The Commission's Decision

In December 2014, the Commission denied the consolidated test claims "on the grounds that most of the

code sections and regulations pled do not impose new mandated activities, and all affected claimants have sufficient fee authority as a matter of law to cover the costs of any new requirements." The decision states that "[t]he Commission finds that the Water Conservation Act of 2009 ..., and the Agricultural Water Measurement regulations promulgated by the Department of Water Resources ... to implement the Act, impose some new required activities on urban water suppliers and agricultural water suppliers, including measurement requirements, conservation and efficient water management requirements, notice and hearing requirements, and documentation requirements, with specified exceptions and limitations. [¶] However, the Commission finds that several agricultural water suppliers are either exempted from the requirements of the test claim statutes and regulations or are subject to alternative and less expensive compliance alternatives because the activities were already required by a regime of federal statutes and regulations, which apply to most agricultural water suppliers within the state."

The Commission's decision concludes that, "to the extent that the test claim statute and regulations impose any new state-mandated activities, they do not impose costs mandated by the state because the Commission finds that urban water suppliers and agricultural water suppliers possess fee authority, sufficient as a matter of law to cover the costs of any new required activities. Therefore, the test claim statute and regulations do not impose costs mandated by the state pursuant to [Government Code section 17556\(d\)](#), and are not reimbursable under [article XIII B, section 6 of the California Constitution](#)." The Commission rejected the Water and Irrigation Districts' arguments that after the enactment of Proposition 218 "they are now 'authorized to do no more than propose a fee increase that can be rejected' by majority protest." (Fns. omitted.) The Commission reasoned that "[i]n order for the Commission to make findings that the claimants' fee authority has been diminished, or negated, pursuant to article XIII D, section 6(a), the claimants would have to provide evidence that they tried and failed to impose or increase the necessary fees, or provide evidence that a court determined that Proposition 218 represents a constitutional hurdle to fee authority as a matter of law." The Commission determined it could not make either finding.

*184 **774 As to the second test claim, the Commission determined these water and irrigation districts "are not subject to the taxing and spending limitations of articles XIII A and XIII B, and are therefore not eligible for reimbursement under [article XIII B, section 6 of the California Constitution](#)."

Trial Court Proceedings

*185 DISCUSSION

In February 2015, the Water and Irrigation Districts filed a petition for writ of administrative mandate under [Code of Civil Procedure section 1094.5](#) to challenge the Commission's denial of their test claims. The trial court heard the matter and denied the Water and Irrigation Districts' writ petition.

The trial court's decision noted that "[w]hile the court agrees with [the Water and Irrigation Districts] that the Commission abused its discretion in dismissing the test claims of Richvale and Biggs-West, the court shall deny the petition because [the Water and Irrigation Districts] have failed to show how they incurred reimbursable state-mandated costs." Noting the Water and Irrigation Districts admitted "that, but for Proposition 218, they would have sufficient authority to establish or increase fees or charges to recover the costs of any new mandates," the trial court determined it was "unwilling to conclude that [the Water and Irrigation Districts] lack 'sufficient' fee authority based on the speculative and uncertain threat of a majority protest. Thus, in the absence of a showing that [the Water and Irrigation Districts] have 'tried and failed' to impose or increase the necessary fees, the Commission properly concluded that [the Water and Irrigation Districts] have sufficient fee authority to cover the costs of any mandated programs." Continuing with this reasoning, the trial court stated that "[l]ogically, then the limitations period for filing a test claim cannot begin to run until after the agency has 'tried and failed' to recover the costs through fees or charges subject to a majority protest requirement."

The trial court also concluded the Commission abused its discretion in determining Richvale and Biggs are ineligible for subvention because they do not receive ad valorem property tax revenue. However, the trial court declined to make a determination of these districts' entitlement to reimbursement for lack of an adequate record. In the trial court's view, "[d]etermining whether Richvale and Biggs-West receive 'proceeds of taxes' will require a comprehensive account of the revenues received by them, and a subsequent determination as to whether those revenues constitute 'taxes' within the meaning of Article XIII B. No simple feat." Nonetheless, the trial court determined the ability of Richvale and Biggs to levy fees supported the conclusion they are not eligible for subvention for their test claims.

I

Standard of Review

^[2] ^[3]As the California Supreme Court has explained, "Courts review a decision of the Commission to determine whether it is supported by substantial evidence. ([Gov. Code, § 17559.](#)) Ordinarily, when the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same. ([County of Los Angeles v. Commission on State Mandates](#) (1995) 32 Cal.App.4th 805, 814, 38 Cal.Rptr.2d 304 ([County of Los Angeles](#)).) However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions. ([City of San Jose v. State of California](#) (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)" (****775** [Department of Finance v. Commission on State Mandates](#) (2016) 1 Cal.5th 749, 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

^[4] ^[5]Even while exercising independent review of statutes and constitutional provisions, we recognize that "[w]here the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See [Traverso v. People ex rel. Dept. of Transportation](#) (1996) 46 Cal.App.4th 1197, 1206 [54 Cal.Rptr.2d 434].) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission ..., 'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action.' (Judicial Review of Agency Action (Feb. 1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)" ([Yamaha Corp. of America v. State Bd. of](#)

Equalization (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

II

Subvention and the Authority to Levy Fees

The Water and Irrigation Districts contend they no longer have authority to impose fees to pay for state-mandated water upgrades because Proposition 218 provides that any new fees may be defeated by a majority protest by their water customers. We are not persuaded.

***186 A.**

Subvention

The voters' passage of Proposition 4 in 1979 added a subvention requirement to article XIII B in addition to restricting the amount of taxes state and local governments may appropriate and spend each year.² Specifically, article XIII B "requires state reimbursement of resulting local costs whenever, after January 1, 1975, 'the Legislature or any state agency mandates a new program or higher level of service on any local government' ([Cal. Const., art. XIII B,] § 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. ([Id.,] § 8, subs. (a), (b).)" (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*).)

To implement the constitutional subvention requirement, the Legislature enacted [Government Code section 17551](#) (Stats. 1984, ch. 1459, § 1, pp. 5113-5119) that provides for the Commission to "hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by [Section 6 of](#)

Article XIII B of the California Constitution." (Gov. Code, § 17551, subd. (a).) The Commission is a quasi-judicial body. (Gov. Code, § 17500.) As this court has previously noted, "all questions concerning state-mandated costs are to be presented to the Commission in the first instance. (****776** Gov. Code, § 17500 et seq.) This is the exclusive means for pursuing such claims. (Gov. Code, § 17552.)" (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640, 21 Cal.Rptr.2d 453.)

[Government Code section 17514](#) states that "[c]osts mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#)." However, [section 17556](#) provides that "[t]he [Commission] shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: [¶] ... [¶] (d) The local agency ***187** 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. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued."

In the event the local agency believes it is entitled to subvention for a new unfunded state mandate, "[t]he local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, §§ 17521, 17551, 17555.) ... If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under [section 1094.5 of the Code of Civil Procedure](#). (Gov. Code, § 17559.) [Government Code section 17552](#) declares that these provisions 'provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6' " (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81-82, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

B.

Connell v. Superior Court

Connell involved a test claim brought by Santa Margarita to seek subvention for a statewide regulation requiring the water districts to increase water purity for reclaimed wastewater when used for certain types of irrigation. (*Connell, supra*, 59 Cal.App.4th at p. 385, 69 Cal.Rptr.2d 231.) The state Board of Control (now Commission on State Mandates) found the regulation constituted a reimbursable state mandate. (*Id.* at p. 387, 69 Cal.Rptr.2d 231.) The trial court affirmed the Board’s decision, from which the State Controller and State Treasurer appealed. (*Id.* at pp. 385-386, 69 Cal.Rptr.2d 231.) The State Controller and State Treasurer argued Santa Margarita had legal authority to pay for the increased water quality costs and therefore was not entitled to subvention. Relying on a statutory provision now contained in Government Code section 17556, this court agreed. (*Connell*, at pp. 386, 397-398, 69 Cal.Rptr.2d 231.) Then, as now, Government Code section 17556, has provided in pertinent part that the Commission “shall not find costs mandated by the state ... in any claim submitted by a local agency or school district, if, after a hearing, the [Commission] finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” (Compare **777 *Connell*, at p. 398, fn. 16, 69 Cal.Rptr.2d 231, with Gov. Code, § 17556.)

Connell noted the California Supreme Court has held that Article XIII B, section 6, “requires subvention only when the costs in question can be *188 recovered solely from tax revenues. ([County of Fresno v. State of California (1991) 53 Cal.3d 482,] 487 [280 Cal.Rptr. 92, 808 P.2d 235].) Government Code section 17556, subdivision (d), ‘effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound.’ ” (*Connell, supra*, 59 Cal.App.4th at p. 398, 69 Cal.Rptr.2d 231, quoting *County of Fresno*, at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235, italics added.) Thus, *Connell* examined whether the Santa Margarita Water District had authority to pay for the increase in water quality from sources other than taxes.

This court, in *Connell*, held Water Code section 35470

provided Santa Margarita with authority to recover the costs of increased water quality as mandated by the state regulation. (59 Cal.App.4th at p. 398, 69 Cal.Rptr.2d 231.) As *Connell* recounts, former Water Code section 35470 (Stats. 1976, ch. 1044, § 1, p. 4664) then provided that “[a]ny district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.”³ (*Connell, supra*, 59 Cal.App.4th at p. 398, 69 Cal.Rptr.2d 231.) Based on this statutory authority to levy fees, *Connell* held the water districts “have authority, i.e., the right or power, to levy fees sufficient to cover the costs.” (*Id.* at p. 401, 69 Cal.Rptr.2d 231.)

In so holding, *Connell* rejected the Santa Margaritas’ invitation “to construe ‘authority,’ as used in the statute, as a practical ability in light of surrounding *189 economic circumstances.” (*Connell, supra*, 59 Cal.App.4th at p. 401, 69 Cal.Rptr.2d 231.) Santa Margarita argued the new regulations would make reclaimed water unmarketable – with the result that users would switch to potable water. (*Id.* at pp. 401-402, 69 Cal.Rptr.2d 231.) This court held the economic practicability argument **778 “was irrelevant and injected improper factual questions into the inquiry” that “presented a question of law.” (*Id.* at pp. 401, 402, 69 Cal.Rptr.2d 231.)

Finally, this court noted but did not decide on a passing comment by Santa Margarita that, under Proposition 218, “ ‘the authority of local agencies to recover costs for many services [is] impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees.’ ” (*Connell, supra*, 59 Cal.App.4th at p. 403, 69 Cal.Rptr.2d 231.) This case takes up where *Connell* left off, namely with the question of whether the passage of Proposition 218 undermined water and irrigation districts’ authority to levy fees so that they are entitled to subvention for state-mandated regulations requiring water infrastructure upgrades. The Water and Irrigation Districts do not argue this court wrongly decided *Connell, supra*, 59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, but only that the rule of decision was superseded by Proposition 218.

Consequently, we proceed to examine the effect of Proposition 218 on the continuing applicability of *Connell*.

C.

Proposition 218

^[6]To determine whether and how Proposition 218 affects the entitlement of the Water and Irrigation Districts to subvention of the costs of state-mandated water upgrades, we survey the context within which Proposition 218 was passed by California voters. “Proposition 218 can best be understood against its historical background, which begins in 1978 with the adoption of Proposition 13. ‘The purpose of Proposition 13 was to cut local property taxes. [Citation.]’ (*County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1451, 29 Cal.Rptr.2d 103.) Its principal provisions limited ad valorem property taxes to one percent of a property’s assessed valuation and limited increases in the assessed valuation to two percent per year unless and until the property changed hands. (Cal. Const., art. XIII A, §§ 1, 2.) [¶] To prevent local governments from subverting its limitations, Proposition 13 also prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. (Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 6-7, 2 Cal.Rptr.2d 490, 820 P.2d 1000.) It has been held, however, that a special assessment is not a special tax within the meaning of Proposition 13. (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 141, 14 Cal.Rptr.2d 159, 841 P.2d 144, and cases cited.) Accordingly, a special assessment could be imposed without a two-thirds *190 vote.” (*Howard Jarvis Taxpayers Ass’n v. City of Riverside* (1999) 73 Cal.App.4th 679, 681-683, 86 Cal.Rptr.2d 592 (*Howard Jarvis Taxpayers Ass’n*)).

“In November 1979, the voters adopted Proposition 4, adding article XIII B to the state Constitution. Article XIII B—the so-called ‘Gann limit’—restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’ (Art. XIII B,] §§ 1, 3, 8, subds. (a)–(c).)” (*City of Sacramento, supra*, 50 Cal.3d at pp. 58-59, 266 Cal.Rptr. 139, 785 P.2d 522.) The Supreme Court in *City of Sacramento* noted that “Articles XIII A and XIII B work in tandem, together restricting

California governments’ power both to levy and to spend for public purposes.” (*Id.* at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)

The Gann Limit applies to *taxes* rather than *fees*. “Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide ‘permanent protection for taxpayers from excessive taxation’ **779 and ‘a reasonable way to provide discipline in tax spending at state and local levels.’ (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an ‘appropriations limit’ for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no ‘appropriations subject to limitation’ in excess thereof (*id.*, § 2). (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 446 [170 Cal.Rptr. 232].) It defines the relevant ‘appropriations subject to limitation’ as ‘any authorization to expend during a fiscal year the proceeds of taxes. ...’ (Cal. Const., art. XIII B, § 8, subd. (b).) It defines ‘proceeds of taxes’ as including ‘all tax revenues and the proceeds to ... government from,’ inter alia, ‘regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service’ (Cal. Const., art. XIII B, § 8, subd. (c), emphasis added.) Such ‘excess’ proceeds from ‘licenses,’ ‘charges,’ and ‘fees’ ‘are but taxes’ for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451 [170 Cal.Rptr. 232], italics in original.) [¶] Article XIII B of the Constitution, however, was not intended to reach beyond taxation.” (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487, 280 Cal.Rptr. 92, 808 P.2d 235.)

^[7] ^[8]The Gann Limit does not require voter approval for imposition of special assessments. (*Howard Jarvis Taxpayers Ass’n, supra*, 73 Cal.App.4th at p. 682, 86 Cal.Rptr.2d 592.) The court in *Howard Jarvis Taxpayers Ass’n* recounted that, “[i]n November 1996, in part to change this rule, the electorate adopted Proposition 218, which added Articles XIII C and XIII D to the California Constitution. Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or *191 charge. (Cal. Const., art. XIII D, § 3, subds. (a)(1)–(a)(4); see also Cal. Const., art. XIII D, § 2, subd. (a).) It buttresses Proposition 13’s limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges. [¶] First, Proposition 218 defines an ‘assessment’ as ‘any levy or

charge upon real property ... for a special benefit conferred upon the real property.’ (Cal. Const., art. XIII D, § 2, subd. (b).) It defines a ‘special benefit’ as ‘a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.” ’ (Cal. Const., art. XIII D, § 2, subd. (i).) Proposition 218 then provides that an assessment may be imposed only if (1) it is supported by an engineer’s report (Cal. Const., art. XIII D, § 4, subd. (b)), (2) it does not exceed the reasonable cost of the proportionate special benefit conferred on each affected parcel (Cal. Const., art. XIII D, § 4, subds. (a), (f)), and (3) it receives, by mailed ballot, a vote of at least half of the owners of affected parcels, weighted ‘according to the proportional financial obligation of the affected property.’ (Cal. Const., art. XIII D, § 4, subds. (c)-(e)). [¶] ... Four specified classes of preexisting assessments, however, are ‘exempt from the procedures and approval process set forth in Section 4.’ (Cal. Const., art. XIII D, § 5.) ... Under article XIII D, section 5, subdivision (a) of the California Constitution (section 5(a)), a preexisting special assessment is exempt if it is ‘imposed exclusively to finance the capital costs or **780 maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control.’ ” (Howard Jarvis Taxpayers Ass’n., supra, at pp. 682-683, 86 Cal.Rptr.2d 592, italics changed.)

D.

The Water and Irrigation Districts’ Statutory Authority to Recover Costs from Ratepayers

In approaching the Water and Irrigation Districts’ argument regarding their statutory authority, or lack thereof, to impose fees for improvements required by the Water Conservation Act, we begin by considering the California Supreme Court’s guidance in *Bighorn*, supra, 39 Cal.4th 205, 46 Cal.Rptr.3d 73, 138 P.3d 220. *Bighorn* involved the question whether local voters could adopt an initiative measure to reduce a local water district’s charges for domestic water and to require the district to receive preapproval from the voters for any future increase. (*Id.* at p. 209, 46 Cal.Rptr.3d 73, 138 P.3d 220.) Although *Bighorn* considered the question in terms of the

voters’ initiative powers, the California Supreme Court articulated an approach to understanding how voter powers to affect water district rates affect the ability of the water districts to recover their costs.

*192 [9]At the heart of *Bighorn* lies the distinction between majority *protest* procedures for fees that may occur after imposition of the fees and assessments in contrast to the voter-approval requirement imposed by Proposition 218 before new taxes may be imposed. The voter-approval requirement of article XIII C, in section 2, subdivision (b), provides that “ ‘[n]o local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote,’ and it provides, in subdivision (d), that ‘[n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.’ ” (*Bighorn*, supra, 39 Cal.4th at p. 211, 46 Cal.Rptr.3d 73, 138 P.3d 220.) This voter-approval requirement, however, does not apply to levying fees for water service. Instead, section 6 of article XIII “expressly exempts water service charges from the voter-approval requirement that it imposes on all other fees and charges.” (*Bighorn* at pp. 218-219, 46 Cal.Rptr.3d 73, 138 P.3d 220.) The *Bighorn* court concluded that, “[a]t least as to fees and charges that are property related, section 6 of California Constitution article XIII D would appear to embody the electorate’s intent as to when voter-approval should be required, or not required, before existing fees may be increased or new fees imposed, and the electorate chose not to impose a voter-approval requirement for increases in water service charges.” (*Id.* at p. 219, 46 Cal.Rptr.3d 73, 138 P.3d 220, italics added.) In other words, while new taxes require voter consent, the imposition of new water service fees do not require such preapproval.

Equally important for purposes of the issue presented in this case, the *Bighorn* court explored the power-sharing relationship between local agencies and the electorate when noting Proposition 218’s addition of article XIII C, section 3, to the California Constitution “does not authorize an initiative to impose a requirement of voter preapproval for future rate increases or new charges for water delivery. In other words, by exercising the initiative power voters may decrease a public water agency’s fees and charges for water service, but the agency’s governing board may then raise other fees or impose new fees without prior voter approval. Although this power-sharing arrangement **781 has the potential for conflict, we must presume that both sides will act reasonably and in good faith, and that the political process will eventually lead to compromises that are mutually acceptable and both

financially and legally sound. (See *DeVita v. County of Napa* [(1995)] 9 Cal.4th [763,] 792-793 [38 Cal.Rptr.2d 699, 889 P.2d 1019] [‘We should not presume ... that the electorate will fail to do the legally proper thing’].) We presume local voters will give appropriate consideration and deference to a governing board’s judgments about the rate structure needed to ensure a public water agency’s fiscal solvency, and we assume the board, whose members are elected (see Stats. 1969, ch. 1175, § 5, p. 2274, 72B West’s Ann. Wat.-Appen. [(1995 ed.)] ch. 112, p. 190), will give appropriate consideration and deference to the voters’ expressed wishes for affordable water service. The notice *193 and hearing requirements of subdivision (a) of section 6 of California Constitution article XIII D will facilitate communications between a public water agency’s board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers’ concerns that the agency’s water delivery charges are excessive.” (*Bighorn, supra*, 39 Cal.4th at pp. 220-221, 46 Cal.Rptr.3d 73, 138 P.3d 220, italics added; fns. omitted.) Here, the Water and Irrigation Districts have statutory authority to impose fees on their customers without need to first secure voter approval.

Biggs is a water district governed by Division 13 of the Water Code, which is known as the California Water District Law. (*Water Code*, § 34000 et seq.) Within Division 13, *Water Code* section 35470 provides that the water districts in this case “may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, *and may fix and collect charges therefor.*” (Italics added.) This portion of *Water Code* section 35470 remains unchanged since this court’s decision in *Connell, supra*, 59 Cal.App.4th at page 398, 69 Cal.Rptr.2d 231. *Water Code* section 35470 expressly reflects the Legislature’s determination that water districts may charge the necessary fees for water service to their customers.

We reach the same conclusion with respect to the irrigation districts even though they derive their statutory fee authority from elsewhere in the Water Code. Paradise, South Feather, Richvale, Oakdale, and Glenn-Colusa are irrigation districts governed by Division 11 of the Water Code, which is known as the Irrigation District Law. (*Water Code*, § 20500 et seq.) Within Division 11, *Water Code* section 22280 provides in pertinent part: “Any district may in lieu in whole or in part of levying assessments *fix and collect charges for any service furnished* by the district” (Italics added.) The italicized portion of *Water Code* section 22280 provides Paradise, South Feather, Richvale, Oakdale, and Glenn-Colusa with

statutory authority for imposing fees for implementing the mandates of the Conservation Act.

[10] [11]The express statutory authority of the Water and Irrigation Districts to impose fees under Divisions 11 and 13 of the Water Code means the costs of complying with the Conservation Act are not subject to subvention because the costs are “recoverable from sources other than taxes” within the meaning of article XIII B. (*County of Fresno, supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) As the California Supreme Court has held, “Article XIII B of the Constitution ... was not intended to reach beyond taxation.” (*Ibid.*) Consequently, the Water and Irrigation Districts are not entitled to subvention. **782 *Government Code* section 17556, subdivision (d), provides that subvention is not available if the local agency “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

*194 The Water and Irrigation Districts in this case do not dispute that *Water Code* sections 22280 and 35470 provide them with statutory authority to recover the costs necessary to comply with conservation goals imposed by the Conservation Act. Instead, the Water and Irrigation Districts deny they have the ability to impose fees because of the existence of protest procedures. For example, *Government Code* section 53755 delineates the procedural requirements for notice and hearing applicable to changes in property-related fees and charges. *Section 53755*, however, does not divest the Water and Irrigation Districts of the ability to raise fees for subvention purposes simply because it allows a majority protest procedure. (*Gov. Code*, § 53755, subds. (a)(1) & (b).) Instead, sections 22280 and 35470 expressly grant the Water and Irrigation Districts authority to impose fees and do so without prior voter approval. The existence of a power-sharing arrangement between the Water and Irrigation Districts and voters does not undermine the fee authority that the districts have under sections 22280 and 35470. (*Bighorn, supra*, 39 Cal.4th at pp. 220-221, 46 Cal.Rptr.3d 73, 138 P.3d 220.)

Proposition 218 also imposes a majority protest procedure but also does not divest the Water and Irrigation Districts of their authority to levy fees. (Art. XIII D, § 6, subd. (a) & (c).) Article XIII D, section 6, requires a local agency to identify parcels to be subject to a new fee, calculate the fee amount, and provide notice to affected property owners of the proposed fee. (*Id.*, § 6, subd. (a)(1).) The local agency shall conduct a public hearing and consider all written protests filed by the affected property owners. (*Id.*, § 6, subd. (a)(2).) If a majority of the property owners present written protests against the fee, the fee

may not be imposed. (*Ibid.*) As with the statutory protest procedures, the *possibility* of a protest under article XIII D, section 6, does not eviscerate the Water and Irrigation Districts' ability to raise fees to comply with the Water Conservation Act.

As a constitutionally sound power-sharing arrangement, the protest procedure implemented by Proposition 218 is not properly construed as a deprivation of fee authority as the Water and Irrigation Districts urge. We disagree with the assumption of the Water and Irrigation Districts and amici that water customers' ability to file written protests by its very nature deprives local agencies of their ability to raise fees for necessary projects. Consistent with the California Supreme Court's reasoning in *Bighorn*, we presume local voters will give appropriate consideration and deference to state mandated requirements relating to water conservation measures required by statute. (*Bighorn*, *supra*, 39 Cal.4th at p. 220, 46 Cal.Rptr.3d 73, 138 P.3d 220.) Consequently, we reject the Water and Irrigation Districts' proposition that the existence of the majority protest procedure enacted through Proposition 218 represents the evisceration of water and irrigation districts' legal authority to levy fees necessary to comport with state water laws. Proposition 218 implemented a power-sharing *195 arrangement that does not constitute a revocation of the Water and Irrigation Districts' fee authority. (*Ibid.*)

^[12]We also reject the Water and Irrigation Districts' claim that, as a matter of practical reality, the majority protest procedure allows water customers to defeat the Districts' authority to levy fees. This contention is similar to the argument presented **783 in *Connell* where Santa Margarita asserted the state mandated regulation was not economically practicable. (*Connell*, *supra*, 59 Cal.App.4th at p. 401, 69 Cal.Rptr.2d 231.) We adhere to our holding in *Connell* that the inquiry into fee authority constitutes an issue of law rather than a question of fact. (*Ibid.*) Fee authority is a matter governed by statute rather than by factual considerations of practicality.

^[13] ^[14] ^[15]The corollary of our continued adherence to the rule articulated in *Connell*, *supra*, 59 Cal.App.4th 382, 69 Cal.Rptr.2d 231 is that fee authority is not controlled by whether the Water and Irrigation Districts have "tried and failed" to levy fees. We decline to adopt the trial court's try-and-fail approach that suggests the Water and Irrigation Districts may become entitled to subvention despite their continuing statutory authority to levy fees upon showing a district's water customers with majority voting power defeated the proposed levy. As noted above, *Bighorn* instructs that we presume voters will give appropriate consideration and deference to proposals of

fees by the boards of the Water and Irrigation Districts. (*Bighorn*, *supra*, 39 Cal.4th at pp. 220-221, 46 Cal.Rptr.3d 73, 138 P.3d 220.) Statutory authorization to levy fees – rather than practical considerations – conclusively determines whether the Water and Irrigation Districts are entitled to subvention. Thus, the authority conferred by *Water Code* sections 22280 and 35470 supports the decision of the Commission to deny the Water and Irrigation Districts' test claims.⁴

*196 The Water and Irrigation Districts contend their argument is supported by "precisely the analysis this court performed in *Manteca Unified Sch. Dist. v. Reclamation Dist. No. 17* [(2017) 10 Cal.App.5th 730, 216 Cal.Rptr.3d 256]." We disagree. *Manteca Unified Sch. Dist. v. Reclamation Dist. No. 17* (2017) 10 Cal.App.5th 730, 216 Cal.Rptr.3d 256 (*Manteca*) involved the narrow question of whether a school district could claim a categorical exemption from reclamation district fees for levee maintenance and other reclamation work under *Water Code* section 51200 and Proposition 218. (*Id.* at p. 732, 216 Cal.Rptr.3d 256.) *Water Code* section 51200 provides that "[t]he assessments levied by a [reclamation] district shall include all lands and rights of way within the district, owned by the State or by any city, county, public corporation, or utility district formed under the laws of the State *other than public roads, highways, and **784 school districts.*" (§ 51200, italics added; see also *Manteca*, *supra*, at p. 733, 216 Cal.Rptr.3d 256.) And, as this court noted, "The passage of Proposition 218 in 1996 changed the rules pertaining to exemptions from assessment." (*Id.* at p. 737, 216 Cal.Rptr.3d 256.)

In *Manteca*, this court concluded that "[a]rticle XIII D, section 4, subdivision (a), which supersedes section 51200 in both time and stature, commands that 'Parcels within a district that are owned or used by any agency [or] the State of California ... shall not be exempted from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.'" (*Manteca*, *supra*, 10 Cal.App.5th at p. 737, 216 Cal.Rptr.3d 256.) For purposes of this case, however, *Manteca* is inapposite because it concerned only the narrow question of whether school districts are eligible for categorical exemption from fees levied by reclamation districts. *Manteca* did not address the question of whether the existence of a majority protest procedure so undermines a public agency's ability to raise fees to comply with a state mandate that subvention is required.

The Water and Irrigation Districts also rely on the inapposite case of *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th

1493, 186 Cal.Rptr.3d 362. That case did not examine the effect of the majority protest procedure on the ability of government agencies to levy fees. Instead, *Capistrano* involved the issue of how public water agencies may formulate their rate structures for their customers to be in compliance with the proportionality requirements of Proposition 218. (*Id.* at pp. 1498, 1516, 186 Cal.Rptr.3d 362.)

We are also not persuaded by the Water and Irrigation Districts' reliance on *Mission Springs Water Dist. v. Verjil* (2013) 218 Cal.App.4th 892, 160 Cal.Rptr.3d 524. *Mission Springs* centered on the extent of the initiative power reserved to the people. The *Mission Springs* court held that because water districts did not have the power to set rates so low that they are inadequate to pay the costs of water supply that voters similarly lacked the *197 same power through the initiative process. (*Id.* at p. 921, 160 Cal.Rptr.3d 524.) That decision did not consider whether the majority protest procedure had any effect on the Water and Irrigation Districts' power to collect fees.

The Commission has brought to our attention the Legislature's passage of Senate Bill No. 231 (2017-2018 Reg. Sess.) (Stats. 2017, ch. 536, § 2 (SB 231)). The Water and Irrigation Districts asserted SB 231 was not relevant to the issue in this case. We agree. SB 231 was passed in response to the decision in *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 121 Cal.Rptr.2d 228. *City of Salinas* held storm water drainage fees were a property-related fee requiring voter approval because storm water drains are not "sewers" that are exempt from the voter-approval requirement of article XIII D, section 6, subdivision (c). (*Id.* at p. 1355-1356, 121 Cal.Rptr.2d 228.) SB 231 amended [Government Code section 53750, subdivision \(k\)](#), to expand the definition of "sewer" to include storm water systems for purposes of Article XIII C and XIII D. (Stats 2017, ch. 536, § 1.)

In this case, none of the parties argue the costs for upgrading water service that may be required by the Conservation Act are subject to voter approval. Such an argument would be untenable because SB 231 added **785 [Government Code section 53751, subdivision \(h\)](#), to declare that "Proposition 218 exempts sewer and water services from the voter-approval requirement." (Stats. 2017, ch. 536, § 2.)⁵

Footnotes

¹ Undesignated citations to articles are to the California Constitution.

III

Subvention Eligibility for Richvale and Biggs

Our conclusion that Proposition 218 does not undermine the statutory authority of the Water and Irrigation Districts to levy fees to pay for the costs of complying with the Conservation Act, obviates the need to consider whether the Commission erred in dismissing the test claims of Richvale and Biggs on grounds Richvale and Biggs are not eligible for subvention because they do not receive tax revenues. Richvale and Biggs – along with the other *198 Water and Irrigation Districts – have statutory authority to impose or increase water fees under [Water Code sections 22280 and 35470](#) in order to comply with the Conservation Act.

DISPOSITION

The judgment is affirmed. Respondent Commission on State Mandates and real parties Department of Finance and Department of Water Resources shall recover their costs, if any, on appeal. ([Cal. Rules of Court, rule 8.278\(a\)\(1\) & \(2\)](#).)

We concur:

RAYE, P. J.

BUTZ, J.

All Citations

33 Cal.App.5th 174, 244 Cal.Rptr.3d 769, 19 Cal. Daily Op. Serv. 2555, 2019 Daily Journal D.A.R. 2343

- 2 Proposition 4 was approved by voters in the Special Election, November 6, 1979, effective November 7, 1979 (<[https://ballotpedia.org/California_Proposition_4,_the_%22Gann_Limit%22_Initiative_\(1979\)>](https://ballotpedia.org/California_Proposition_4,_the_%22Gann_Limit%22_Initiative_(1979)>) [as of March 19, 2019], archived at <[>](https://perma.cc/L9EF-Z3CF)) (Proposition 4).
- 3 [Water Code section 35470](#) currently provides: “Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. *Pursuant to the notice, protest, and hearing procedures in Section 53753 of the Government Code*, the charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose.” (Stats. 2007, ch. 27, § 29, p. 116, italics added.) The italicized portion of [Water Code section 35470](#) was added to comport with the protest provision adopted with Proposition 218. (Legis. Counsel’s Dig., Sen. Bill No. 444, Stats. 2007 (2007-2008 Reg. Sess.) Summary Dig., pp. 96-97 <http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0401-0450/sb_444_bill_20070702_chaptered.pdf> [as of March 19, 2019], archived at <[>](https://perma.cc/AQ2N-J8YD).)
- 4 We do not reach the Gann Limit argument tendered by the Counties and Cities amici because the argument was not raised by the Water and Irrigation Districts. Moreover, the Water and Irrigation Districts did not raise this issue in the trial court. Thus, we have no record to determine whether and to what extent the Water and Irrigation Districts even fund their operations from taxes for which they might be subject to the Gann Limit. Rather than speculate whether the Water and Irrigation Districts might run afoul of the Gann Limit, we leave that question for a case in which the issue is properly presented.
We also decline to address the Special Districts amici argument regarding the exclusion of enterprise special districts from the state mandate reimbursement. Again, this issue has not been raised by the parties and is not necessary to resolve the gravamen of this appeal. “ ‘Amicus Curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered.’ ” (*Lance Camper Mfg. Corp. v. Republic Indemnity Co. of America* (2001) 90 Cal.App.4th 1151, 1161, fn. 6, 109 Cal.Rptr.2d 515, quoting *Eggert v. Pacific States S. & L. Co.* (1943) 57 Cal.App.2d 239, 251, 136 P.2d 822.)
Finally, we deny the Special Districts amici request for judicial notice of legislative history materials relating to special districts as unnecessary to the determination of the issue presented in this case.
- 5 Because the Commission’s decision on the test claims is based on its conclusion the Water and Irrigation Districts had sufficient authority to meet goals imposed by the Conservation Act, the Commission asserts it did not determine the extent to which the water conservation goals constitute unfunded state mandates. However, the Water and Irrigation Districts assert the Commission did find the Conservation Act to impose unfunded state mandates. Because we affirm the Commission’s decision on grounds the Water and Irrigation Districts have sufficient authority to recover costs from their ratepayers for water services, we do not need to reach the issue of whether the Conservation Act mandates water districts to incur any costs that would be subject to subvention if the Water and Irrigation Districts lacked legal authority to levy fees and assessments.

8 Cal.5th 713
Supreme Court of California.

CALIFORNIA SCHOOL BOARDS ASSOCIATION
et al., Plaintiffs and Appellants,
v.
STATE of California et al., Defendants and
Respondents.

S247266
|
December 19, 2019

applicable constitutional prohibitions.

[2] **Constitutional Law**
🔑 Facial invalidity

On a facial challenge to the constitutionality of a statute, the Supreme Court considers only the text and purpose of the statute.

Synopsis

Background: School board association and school districts brought action against State challenging constitutionality of statutes designating existing state funding as offsetting revenue for purposes of reimbursing school districts for costs of state mandates for graduation requirements and behavioral intervention plans. The Superior Court, Alameda County, No. RG11554698, [Evelio Grillo, J.](#), denied relief. Association and school districts appealed. The Court of Appeal, [19 Cal.App.5th 566, 228 Cal.Rptr.3d 430](#), affirmed in part and reversed in part. Review was granted.

[3] **Constitutional Law**
🔑 Facial invalidity

Petitioners who challenge the facial constitutionality of a statute cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute.

Holdings: The Supreme Court, [Liu, J.](#), held that:

[1] statutes did not facially violate the State Constitution’s mandate reimbursement requirement, and

[4] **States**
🔑 State expenses and charges and statutory liabilities

[2] statutes did not facially violate the separation of powers provision of State Constitution.

Purposes of state constitutional prohibition on state creation of unfunded mandates for local governments is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies. [Cal. Const. art. XIII B, § 6.](#)

Affirmed.

West Headnotes (7)

[1] **Constitutional Law**
🔑 Facial invalidity

The Supreme Court will not invalidate a statute as facially unconstitutional unless the statute poses a present total and fatal conflict with

[5] **States**
🔑 State expenses and charges and statutory liabilities

Statutes designating existing state funding as

offsetting revenue for purposes of reimbursing school districts for the costs of state mandates for graduation requirements and behavioral intervention plans did not facially violate the state constitutional prohibition on state creation of unfunded mandates for local governments; Legislature had broad authority to determine how it would pay for existing mandates, and the mandate reimbursement requirement of the State Constitution did not dictate that additional revenue was the only way the Legislature could satisfy its mandate obligations. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov't Code § 17557\(d\)\(2\)\(B\)](#); [Cal. Educ. Code § 42238.24](#).

[3, § 3](#); [Cal. Gov't Code § 17557\(d\)\(2\)\(B\)](#); [Cal. Educ. Code § 42238.24](#).

Witkin Library Reference: [9 Witkin, Summary of Cal. Law \(11th ed. 2017\) Taxation, § 119 \[Requirement.\]](#)

****963 ***591** First Appellate District, Division Five, A148606, Alameda County Superior Court, RG11554698, [Evelio M. Grillo](#), Judge

Attorneys and Law Firms

Olson, Hagel & Fishburn, [Deborah B. Caplan](#), Sacramento, and [Richard C. Miadich](#) for Plaintiffs and Appellants.

[Jeffrey C. Williams](#), Irvine, for School Innovations & Achievement as Amicus Curiae on behalf of Plaintiffs and Appellants.

Dannis Woliver Kelley, [Chistian M. Keiner](#) and William B. Tunick for San Jose Unified School District, Grossmont Union High School District, Newport-Mesa Unified School District, Poway Unified School District, East Side Union High School District and Fullerton Joint Union High School District as Amici Curiae on behalf of Plaintiffs and Appellants.

Lozano Smith, [Sloan R. Simmons](#), Sacramento, [Steve H. Ngo](#), Walnut Creek, and [Nicholas J. Clair](#), Sacramento, for Clovis Unified School District, Elk Grove Unified School District, Folsom-Cordova Unified School District, Porterville Unified School District, Sacramento City Unified School District, San Juan Unified School District, San Ramon Valley Unified School District, Twin Rivers Unified School District, Visalia Unified School District, West Contra Costa Unified School District as Amici Curiae on behalf of Plaintiffs and Appellants.

Jennifer B. Henning for California State Association of Counties, League of California Cities and California Special Districts Association as Amici Curiae on behalf of Plaintiffs and Appellants.

[Xavier Becerra](#), Attorney General, [Thomas S. Patterson](#) and [Douglas J. Woods](#), Assistant Attorneys General, [Benjamin M. Glickman](#), [Constance L. LeLouis](#) and [Seth E. Goldstein](#), Deputy Attorneys General, for Defendants and Respondents State of California, State Controller John

[6]

States

🔑 [State expenses and charges and statutory liabilities](#)

In the absence of any limitations on the Legislature's budgeting authority stated in the state constitutional provision requiring the State to provide a subvention of funds to reimburse local governments for the costs of state mandates, the Legislature retains broad power to decide how best to meet the reimbursement requirement. [Cal. Const. art. XIII B, § 6](#).

[7]

Constitutional Law

🔑 [Encroachment on Executive States](#)

States

🔑 [State expenses and charges and statutory liabilities](#)

Statutes designating existing state funding as offsetting revenue for purposes of reimbursing school districts for costs of state mandates for graduation requirements and behavioral intervention plans did not facially violate the separation of powers provision of State Constitution; the operation of statutes to update reimbursement parameters and guidelines to account for offsetting revenues did not disturb the underlying mandate determinations of the Commission on State Mandates. [Cal. Const. art.](#)

Chiang and Director of the Department of Finance Michael Cohen.

Camille Shelton, Sacramento, for Defendant and Respondent Commission on State Mandates.

Opinion

Opinion of the Court by Liu, J.

****964 *719** In 2010, during a period of economic recession, the Legislature enacted two statutes requiring a portion of state funding provided annually to local education agencies to be used prospectively as “offsetting revenues” under [Government Code section 17557, subdivision \(d\)\(2\)\(B\)](#) to satisfy two existing state reimbursement mandates. ([Ed. Code, §§ 42238.24 \[Graduation Requirements\], 56523, subd. \(f\) \[Behavioral Intervention Plans\]](#).) These statutes designate previously non-mandate education funding as restricted funding at the start of the next fiscal year to satisfy the state’s obligation to reimburse school *****592** districts for these two mandates. The question is whether the statutes on their face violate the California Constitution’s mandate reimbursement requirement ([Cal. Const., art. XIII B, § 6](#)) or the separation of powers ([Cal. Const., art. III, § 3](#)).

We hold, in agreement with the Court of Appeal, that the method chosen by the Legislature to pay for the two mandates does not on its face violate the state Constitution. The Legislature has broad authority to determine how it will pay for existing mandates, and neither [article XIII B, section 6 of the Constitution](#) nor the separation of powers dictates that additional revenue is the only way the Legislature can satisfy its mandate obligations. Because this case involves a facial challenge, we have no occasion to consider the validity of the statutes as applied to a school district that claims its mandate costs exceed the state funding designated to pay for those costs.

I.

We begin with an overview of the law governing reimbursement for state mandates and discuss the two mandates at issue in this case.

A.

Enacted by initiative in 1979, [article XIII B, section 6, subdivision \(a\) of the California Constitution](#) says: “Whenever the Legislature or any state ***720** agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service,” with certain exceptions not relevant here. (Ballot Pamp., Special Elec. (Nov. 6, 1979), text of Prop. 4, p. 17.) To implement [article XIII B, section 6](#), the Legislature created the Commission on State Mandates (Commission) as a quasi-judicial body to “hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state.” ([Gov. Code, § 17551, subd. \(a\)](#).)

Provisions in the Government Code set forth a two-step procedure for local agencies and school districts to petition the Commission to find a state mandate. First, “[t]he local agency [including, for these purposes, a school district] must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. ([Gov. Code, §§ 17521, 17551, 17555](#).)” ([County of San Diego v. State of California](#) (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312 ([County of San Diego](#))). At this first step, [Government Code section 17556](#) sets forth various circumstances in which the Commission “shall not find costs mandated by the state.” For example, [section 17556, subdivision \(d\)](#) specifies that no reimbursable mandate exists 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.” And [section 17556, subdivision \(e\)](#) ([section 17556\(e\)](#)) says the Commission shall not find state-mandated costs if “[t]he statute [or] executive order [alleged to impose a mandate] or an appropriation in a Budget Act or other bill provides for offsetting ****965** savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.”

Second, “[i]f the commission determines there are costs mandated by the state *****593** pursuant to [[Government Code\] Section 17551](#), it shall determine the amount to be subvented to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order.” ([Gov. Code, § 17557, subd. \(a\)](#); see [County of San Diego, supra](#), 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Implementing regulations

provide that the parameters and guidelines shall include “[a]ny [o]ffsetting [r]evenues and [r]eimbursements that reduce the cost of any reimbursable activity” (Cal. Code Regs., tit. 2, § 1183.7, subd. (g)) and “[a]ny [o]ffsetting [s]avings” (*id.*, subd. (h)).

In 2010, the Legislature amended the reimbursement procedures, including the circumstances under which a local agency, school district, or the *721 state may seek to amend the reimbursement parameters and guidelines. (Gov. Code, § 17557; Stats. 2010, ch. 719, § 32.) Before the adoption of Senate Bill No. 856 (2009–2010 Reg. Sess.) (Senate Bill 856), Government Code section 17557 provided: “A local agency, school district, or the state may file a written request with the commission to amend, modify, or supplement the parameters and guidelines” for reimbursement of “costs mandated by the state pursuant to [Government Code] Section 17551.” (Stats. 2007, ch. 179, § 14, p. 2249.) Senate Bill 856 modified this provision by enumerating a comprehensive list of circumstances under which a request to amend reimbursement parameters or guidelines may be filed. (Gov. Code, § 17557, subd. (d)(2)(A)–(H).) This list includes an amendment request to “[u]pdate offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of [Government Code] Section 17556.” (Gov. Code, § 17557, subd. (d)(2)(B) (section 17557(d)(2)(B)).)

After the Commission has concluded this two-step process, the Legislature must determine through the annual budget process how to reimburse local agencies for state mandated costs, or it may “suspend the operation of the mandate” for a given budget year “in a manner prescribed by law.” (Cal. Const., art. XIII B, § 6, subd. (b)(1); Gov. Code, §§ 17561, 17562.)

B.

The two mandates at issue in this case are the Graduation Requirements (GR) mandate and the Behavioral Intervention Plans (BIP) mandate.

The GR mandate arises from Education Code section 51225.3, which requires all students to complete two science courses in order to graduate from high school. (Ed. Code, § 51225.3, subd. (a)(1)(C).) The Commission determined in 1987 that this provision imposes a reimbursable state mandate (Com. on State Mandates,

Statement of Dec. No. CSM–4181, Jan. 22, 1987), and this mandate determination remains in effect today (Com. on State Mandates, Parameters and Guidelines Amend. No. CSM 4181 A, 04–PGA–30, 05–PGA–05, 06–PGA–05, Dec. 18, 2008).

The BIP mandate arose from legislation requiring the State Board of Education to adopt regulations for “the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.” (Stats. 1990, ch. 959, § 1.) In 2000, the Commission found that the adopted regulations imposed a reimbursable mandate. (Com. on State Mandates, Statement of Dec. No. CSM–4464, Sept. 28, 2000.) In 2013, the Legislature repealed those regulations, thereby eliminating the *722 BIP mandate. (Ed. Code, § 56523, subd. (a); Stats. 2013, ch. 48, § 44.) ***594 Consequently, plaintiffs’ claim with respect to the BIP mandate extends only to 2013.

In 2010, on the same day that the Legislature passed Senate Bill 856, it also passed Assembly Bill No. 1610 (2009–2010 Reg. **966 Sess.) (Assembly Bill 1610). (Stats. 2010, ch. 724.) Section 16 of Assembly Bill 1610 addresses the GR mandate and provides: “Costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 shall be offset by the amount of state funding apportioned to the district pursuant to this article [or to the relevant portion of the Education Code for a county office of education] and the amount of state funding received from any of the items listed in Section 42605 that are contained in the annual Budget Act. The proportion of the school district’s current expense of education that is required to be expended for payment of the salaries of classroom teachers pursuant to Section 41372 shall first be allocated to fund the teacher salary costs incurred to provide the courses required by the state.” That provision is now codified at Education Code section 42238.24.

Section 27 of Assembly Bill 1610 addresses the BIP mandate by adding the following language to section 56523 of the Education Code: “Commencing with the 2010–11 fiscal year, if any activities authorized pursuant to this section and implementing regulations are found [to] be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110–161–0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.” That provision is now codified at Education Code, section 56523, subdivision (f) (section 56523(f)).

II.

Petitioners in this case are the California School Boards Association and various school districts and county offices of education (collectively, CSBA). In 2011, CSBA filed a petition for writ of mandate and complaint for injunctive and declaratory relief in superior court. The operative pleading is the third amended petition and complaint, which alleges that Senate Bill 856 and Assembly Bill 1610 violate the Constitution. Specifically, CSBA alleges (1) that [Education Code sections 42238.24 and 56523\(f\)](#) violate [article XIII B, section 6](#) and [article III, section 3 of the Constitution](#); (2) that [Government Code section 17557\(d\)\(2\)\(B\)](#) violates [article XIII B, section 6 of the state Constitution](#) “to the extent it allows the State to reduce or eliminate mandate claims by claiming ‘offsetting revenues’ that do not represent new or additional funding and are not specifically intended to pay for the costs of the ***723** mandated program or service, as reflected in the Legislature’s directives in Education Code sections” [42238.24 and 56523](#); (3) that [Government Code sections 17570 and 17556](#) on their face violate [article XIII B, section 6](#) and [article III, section 3 of the state Constitution](#), or that [section 17570](#) violates those constitutional provisions “to the extent it provides a basis for the Director of Finance to seek a new test claim based on these Education Code Provisions”; and (4) that “the current provisions of [Government Code sections 17500–17617](#), facially and as applied, as amended over the past decade,” violate [article XIII B, section 6 of the state Constitution](#). CSBA did not challenge these statutes under Proposition 98, the constitutional amendment approved in 1988 that prescribes a minimum level of state funding *****595** for education. ([Cal. Const., art. XVI, § 8.](#))

In September 2014, the parties stipulated to bifurcation of “the first and second causes of action from the remaining causes of action.” The superior court denied the stipulation without prejudice. CSBA then moved to bifurcate “the first and second cause of action.” The superior court granted “[t]he motion to bifurcate Petitioners’ claim for writ of mandate in their Second Cause of Action in order to allow that claim to be litigated prior to the remaining claims,” finding that “the issues raised by the claims in the Second Cause of Action are sufficiently distinct ... both legally and factually from Petitioners’ other claims.” The superior court subsequently denied the petition for writ of mandate as to the second cause of action.

The Court of Appeal affirmed. ([California School Boards Assn. v. State of California](#) (2018) 19 Cal.App.5th 566, 228

[Cal.Rptr.3d 430.](#)) It held that the term “offsetting revenues” in ****967** [Government Code section 17557\(d\)\(2\)\(B\)](#) is not limited to “additional revenue that was specifically intended to fund the costs of the state mandate.” ([California School Boards Assn.](#), at pp. 584–585, 228 Cal.Rptr.3d 430.) It further held that “[Government Code section 17557, subdivision \(d\)\(2\)\(B\)](#), as applied in [Education Code sections 42238.24 and 56523, subdivision \(f\)](#), does not violate [article XIII B, section 6](#), or [article III, section 3, of the California Constitution.](#)” (*Id.* at p. 592, 228 Cal.Rptr.3d 430.) We granted review.

III.

We first address whether the designation of previously unrestricted funding as “offsetting revenues” in [Education Code sections 42238.24 and 56523\(f\)](#) to pay for the GR and BIP mandates violates the mandate reimbursement requirement in [article XIII B, section 6](#).

A.

^[1] ^[2] ^[3] On a facial challenge, we will not invalidate a statute unless it “pose[s] a present total and fatal conflict with applicable constitutional ***724** prohibitions.” ([California Teachers Assn. v. State of California](#) (1999) 20 Cal.4th 327, 338, 84 Cal.Rptr.2d 425, 975 P.2d 622 ([California Teachers](#)); see [Today’s Fresh Start, Inc. v. Los Angeles County Office of Education](#) (2013) 57 Cal.4th 197, 218, 159 Cal.Rptr.3d 358, 303 P.3d 1140 [describing this test as “exacting”].) We have “sometimes applied a more lenient standard, asking whether the statute is unconstitutional ‘in the generality or great majority of cases.’ ” ([Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.](#) (2017) 3 Cal.5th 1118, 1138, 225 Cal.Rptr.3d 517, 405 P.3d 1087.) Either way, we consider only the text and purpose of the statute, and “petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute.” ([Pacific Legal Foundation v. Brown](#) (1981) 29 Cal.3d 168, 180, 172 Cal.Rptr. 487, 624 P.2d 1215.)

Although CSBA purports to bring both facial and as-applied challenges to these statutes, CSBA acknowledged at argument that its use of the phrase “as applied” refers to the interaction among various provisions in the

Government and Education Codes, and not to the statutes' application to individual school districts. Indeed, CSBA has not identified any school district whose GR or BIP mandate costs exceed the state funding designated to pay for those costs. Our inquiry thus focuses on the facial validity of the statutes.

*****596 B.**

^[4]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.” (*County of San Diego, supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) As noted, the Legislature in 2010 enacted statutes directing the use of state funding to prospectively cover the costs of the GR and BIP mandates. [Education Code section 42238.24](#) requires districts to use otherwise unrestricted state funding to pay for teacher salary costs incurred to fulfill the GR mandate, and [Education Code section 56523\(f\)](#) says state funding for special education “shall first be used to directly offset any mandated costs,” including costs to fulfill the BIP mandate. According to CSBA, these funding arrangements facially violate [article XIII B, section 6](#).

The crux of CSBA’s contention is that the state may not “identify pre-existing education funding as mandate payment” but must instead allocate “additional funding” to satisfy its mandate reimbursement obligation under [article XIII B, section 6](#). CSBA contends the treatment of these funds as “offsetting revenues” under [Government Code section 17557\(d\)\(2\)\(B\)](#) “allows the State to eliminate a mandate obligation without actually providing any payment by simply identifying existing funding and designating it ‘offsetting revenues.’ ” “By using [*725 Government Code section 17557\(d\)\(2\)\(B\)](#) to circumvent the requirement for additional payment,” CSBA argues, “both statutes [[Education Code sections 42238.24 and 56523\(f\)](#)] effectively require schools to use their own proceeds of taxes to pay the costs of these mandates.”

****968** Respondents argue that there is no such constitutional requirement and that the Legislature “has flexibility to meet its requirements under [article XIII B, section 6](#) in a number of ways, including ... designating state funding to offset the cost of the mandate.” Respondents place significant reliance on *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (*Kern*), which rejected a reimbursement claim by two school

districts and a county for costs incurred to implement notice and agenda requirements of various education-related programs. (*Id.* at pp. 730–731, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In *Kern*, we assumed the claimants were legally compelled to participate in one of the programs and held that the claimants had no “entitle[ment] ... to obtain reimbursement under [article XIII B, section 6](#), because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice- and agenda-related expenses.” (*Kern, supra*, 30 Cal.4th at p. 747, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) We observed that the expenses “appear rather modest” and that nothing suggests “a school district is precluded from using a portion of the [state] funds ... for the implementation of the underlying funded program to pay the associated notice and agenda costs. Indeed, the ... program explicitly authorizes school districts to do so.” (*Ibid.*) We went on to say: “It is conceivable, with regard to some programs, that increased compliance costs imposed by the state might become so great — or funded program grants might become so diminished — that funded program benefits would not cover the compliance costs In those circumstances, a compulsory program participant likely would be able to establish the existence of a reimbursable state mandate under [article XIII B, section 6](#). But that certainly is not the situation faced by claimants in this case. ... The circumstance that the program *****597** funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate. (See *County of Sonoma v. Commission on State Mandates* (2000)] 84 Cal.App.4th 1264 [101 Cal.Rptr.2d 784] [art. XIII B, § 6, provides no right of reimbursement when the state reduces revenue granted to local government].)” (*Id.* at pp. 747–748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

^[5]Both *Kern* and *County of Sonoma* involved the first step of the mandate process (i.e., the determination of whether a mandate exists) and not the second step (i.e., the determination of how to pay for a mandate). But the constitutional reasoning of those decisions informs our inquiry here concerning the Legislature’s scope of authority under [article XIII B, section 6](#). ***726** Consistent with *Kern* and *County of Sonoma*, we conclude that neither of the challenged statutes in this case presents a “total and fatal conflict” with [article XIII B, section 6](#). (*California Teachers, supra*, 20 Cal.4th at p. 338, 84 Cal.Rptr.2d 425, 975 P.2d 622.)

^[6]As noted, [article XIII B, section 6](#) requires the state to “provide a subvention of funds to reimburse” local

governments for the costs of state mandates. But [article XIII B, section 6](#) does not prescribe how the Legislature must provide for such reimbursement. In the absence of any limitations on the Legislature's budgeting authority stated in [article XIII B, section 6](#), the Legislature retains broad power to decide how best to meet the reimbursement requirement. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 254, 135 Cal.Rptr.3d 683, 267 P.3d 580 [the Legislature "'may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution'"]; *Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 31, 30 Cal.Rptr.3d 30, 113 P.3d 1062 [the Legislature wields "plenary legislative authority except as specifically limited by the California Constitution"].)

Contrary to what CSBA suggests, the appropriation of new funding is not the only means by which the Legislature may approach its reimbursement obligations under [article XIII B, section 6](#). The state Constitution does not bar the Legislature from (1) providing new funding, (2) eliminating a different ****969** program or funded mandate to free up funds to pay for a new mandate, (3) identifying new offsetting savings or offsetting revenue, (4) designating previously unrestricted funding as prospectively allocated for the mandate, or (5) suspending the mandate and rendering it unenforceable for one or more budget years, among other possible options. (See Cal. Const., art. XIII B, § 6, subd. (b)(1); Gov. Code, § 17557, subd. (d)(2).) Pursuant to its broad authority over revenue collection and allocation, the Legislature may increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is consistent with [Proposition 98](#) and other constitutional guarantees. (See *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 302, 105 Cal.Rptr.2d 636, 20 P.3d 533 (*Carmel Valley*) ["'it is, and indeed must be, the responsibility of the legislative body to weigh [competing] needs and set priorities for the utilization of the limited revenues available'"].)

Here, the Legislature acted within its authority when it enacted two statutes directing the use of previously non-mandate state funding to prospectively cover the costs of the existing GR and BIP mandates. Although CSBA asserts that the GR funding designation leaves school districts *****598** with less ***727** unrestricted money to provide general education programming and that the BIP funding designation diminishes the amount of funds available for other special education services, these general claims of insufficient funding, without more, do not make out a constitutional violation. "The circumstance that the program funds claimants may have wished to use

exclusively for substantive program activities are ... reduced" by the designation of a subset of those funds to support mandate costs does not mean the Legislature has run afoul of [article XIII B, section 6](#). (*Kern, supra*, 30 Cal.4th at p. 748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

CSBA contends that the costs at issue in *Kern* were de minimis whereas the costs to implement the GR and BIP mandates are far more substantial. But there is no dispute that the aggregate funds specified in [Education Code sections 42238.24](#) and [56523\(f\)](#) are more than sufficient to cover the costs of the GR and BIP mandates. As respondents note, "[t]he Legislature has appropriated between \$20 to \$30 billion per year in general purpose funding that must be used to first offset the cost of the graduation requirement mandate," and "CSBA asserts that the graduation requirements mandate costs schools approximately \$200 million annually." Similarly, the Legislature allocates over \$3 billion annually in special education funding statewide; CSBA alleges that the annual costs of the BIP mandate were approximately \$65 million. Moreover, CSBA has not shown that the designated funds are insufficient to cover the GR and BIP mandates in any individual school district. It is possible that a school district could bring an as-applied challenge to the statutes at issue here if its GR or BIP mandate costs exceed the amount of state funds designated for reimbursement. But because no such insufficiency has been demonstrated in "the vast majority of [cases]" (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 343, 66 Cal.Rptr.2d 210, 940 P.2d 797 (plur. opn. of George, C.J.)) or " 'the generality of cases' " (*California Teachers, supra*, 20 Cal.4th at p. 347, 84 Cal.Rptr.2d 425, 975 P.2d 622), CSBA's facial challenge cannot succeed.

CSBA's insistence that [article XIII B, section 6](#) requires the state to provide "additional" funding to cover the GR and BIP mandates ultimately rests on its contention that the Legislature may not "identify pre-existing education funding as mandate payment." But [article XIII B, section 6](#) does not guarantee any baseline of "pre-existing education funding," and CSBA has not alleged that diminution of unrestricted funding for general education or general-use funding for special education as a result of the GR and BIP allocations violates [Proposition 98](#), another mandate obligation, or any other constitutional funding guarantee. Indeed, CSBA concedes that they "are not asserting that the level of unrestricted funding must be held at a certain level that cannot be changed. Petitioners acknowledge that the State can adjust funding (within the parameters of [Proposition 98](#)), and the precise mix of unrestricted and restricted (categorical) funding as well as ****970** ***728** the amount of mandate payments remains subject to a legislative determination." At oral argument, CSBA

acknowledged that the Legislature could have reduced each school district's unrestricted funding by an amount equal to the costs of the two mandates, while simultaneously increasing each school district's restricted funding by that same amount. Yet this would have resulted in the same mix of restricted and unrestricted funding that resulted from the Legislature's enactment of [Education Code sections 42238.24 and 56523\(f\)](#). We see nothing in the text or purpose of [article XIII B, section 6](#) that requires the Legislature, exercising its plenary ***599 authority over state revenue allocation, to pursue one method instead of the other to achieve the same result.

While acknowledging the Legislature's broad authority to allocate *state* revenue, CSBA argues that the funds specified in [Education Code sections 42238.24 and 56523\(f\)](#) are "local proceeds of taxes" and that the Legislature's allocation of those funds for the GR and BIP mandates unconstitutionally requires local education agencies to use *local* revenues to pay mandate costs. (See [Cal. Const., art. XIII B, § 8](#); [Gov. Code, §§ 7906, 7907.](#)) CSBA explains that whereas *Kern* involved a categorical program for which the Legislature could properly direct the allocation of state funding (see *Kern, supra*, 30 Cal.4th at pp. 746–748, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [addressing the Chacon-Moscone Bilingual-Bicultural Education program]; [Gov. Code, former § 7906, subd. \(e\)](#), as amended by Stats. 1989, ch. 1395, § 7, p. 6058 ["categorical aid subventions shall not be considered proceeds of taxes for a school district"]), this case involves unrestricted education funding that constitutes "local proceeds of taxes," and "once certain funding is defined as the education agencies' 'proceeds of taxes,' it is protected by [Section 6](#) and the State's authority is correspondingly limited."

CSBA is correct that [Government Code sections 7906 and 7907](#) define school districts' and county superintendents' "proceeds of taxes" to include unrestricted state education funding. But those statutes do not guarantee or lock into place any baseline of unrestricted state funding, and as explained above, [article XIII B, section 6](#) does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes. Further, [article XIII B](#) makes clear that "[w]ith respect to any local government, 'proceeds of taxes' shall include subventions received from the State, *other than pursuant to Section 6*" ([Cal. Const., art. XIII B, § 8, subd. \(c\)](#), italics added), and [Government Code section 7906, subdivision \(c\)\(2\)\(A\)](#) likewise provides, "In no case shall subventions received from the state for reimbursement of state mandates in accordance with the provisions of [Section 6 of Article XIII B of the California Constitution](#) ... be considered 'proceeds of taxes' for purposes of this

section." Both of these provisions exclude state funding for mandate costs from the definition of local "proceeds of taxes" while stating no limitation on how the Legislature may cover mandate costs.

*729 CSBA's "local proceeds of taxes" argument ultimately reduces to the assertion that [article XIII B, section 6](#) prohibits the Legislature from allocating the funds specified in [Education Code sections 42238.24 and 56523\(f\)](#) to pay mandate costs because those funds are subventions received from the state other than pursuant to [article XIII B, section 6](#). But even if those funds were previously "local proceeds of taxes," the Legislature has prospectively designated them as subventions for mandate reimbursement in accordance with [article XIII B, section 6](#). CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes. (See [Cal. Const. art. XIII B, § 8, subd. \(c\)](#); [Gov. Code, § 7906, subd. \(c\)\(2\)\(A\)](#).)

CSBA further contends that the term "offsetting revenues" in [Government Code section 17557\(d\)\(2\)\(B\)](#) should be narrowly construed to mean "additional revenue that was specifically intended to fund the costs of the state mandate," which is a phrase that [Government Code section 17556\(e\)](#) uses (together with "offsetting ***600 savings") to guide the Commission's determination of whether a ***971 state-imposed program gives rise to a reimbursement obligation in the first place. But CSBA advances this statutory argument primarily as a matter of constitutional avoidance, and we have determined there is no constitutional infirmity to be avoided. CSBA also says it is incongruous to permit the state "to identify funding that would be insufficient to defeat the *creation* of a mandate under [section 17556\(e\)](#) to defeat the right to *reimbursement* for that mandate under [section 17557\(d\)\(2\)\(B\)](#)." But there is nothing incongruous about a statutory framework that (1) requires no mandate finding if the Legislature provides local agencies with additional revenue that is specifically intended to fund a state program at the onset ([Gov. Code, § 17556\(e\)](#)), while also (2) providing a separate mechanism for amending reimbursement guidelines for existing mandates if offsetting revenues are later designated (*id.*, [§ 17557\(d\)\(2\)\(B\)](#)). [Section 17556\(e\)](#)'s reference to "additional revenue" for purposes of mandate determination is not constitutionally compelled, and the Legislature has broad authority to enact subsequent legislation for determining how an existing reimbursement obligation may be satisfied going forward. CSBA does not cite any legislative history or other indication that the

Legislature intended the term “offsetting revenues” in [section 17557\(d\)\(2\)\(B\)](#) to have the same meaning as the “additional revenue” phrase in [section 17556\(e\)](#). Instead, CSBA’s briefing argues that the Legislature’s intent in enacting [section 17557\(d\)\(2\)\(B\)](#) was to “circumvent[] the restrictions of [section 17556\(e\)](#).”

In sum, we hold that the Legislature’s designation of state funding in [Education Code sections 42238.24 and 56523\(f\)](#) as “offsetting revenues” to [*730](#) pay GR and BIP mandate costs under [Government Code section 17557\(d\)\(2\)\(B\)](#) does not violate [article XIII B, section 6 of the state Constitution](#).

IV.

We now consider whether [Government Code section 17557\(d\)\(2\)\(B\)](#) violates the separation of powers. (See [Cal. Const., art. III, § 3](#) [“The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”].)

Here CSBA’s argument is that [Government Code section 17557\(d\)\(2\)\(B\)](#) “provid[es] a procedural mechanism that allows the State to use the parameters and guidelines to negate the mandate decision ... [and] overrule the Commission’s determinations” that the GR and BIP requirements impose reimbursable costs. CSBA explains: “It is only after the Commission ‘determines there are costs mandated by the state pursuant to [[Government Code Section 17551](#)]’ that the ‘amount’ is determined through the parameters and guidelines for reimbursement.[] ([Gov. Code, § 17557\(a\)](#).) The mandate determination therefore necessarily includes a finding that the local agency is incurring costs requiring reimbursement; the ‘update’ allowed by the State’s construction of [section 17557\(d\)\(2\)\(B\)](#) allows it to direct the Commission to make the opposite finding — that there are no costs requiring reimbursement.” According to CSBA, this construction “dramatically limit[s] the finality of Commission decisions” and therefore violates the separation of powers. (See [California School Boards Assn. v. State of California](#) (2009) 171 Cal.App.4th 1183, 1189, 90 Cal.Rptr.3d 501 ([California School Boards](#)) [holding that the Legislature violated separation of powers by enacting [***601](#) statutes directing the Commission to reconsider mandate decisions that were already final].) The proper route for revisiting a mandate determination, CSBA says, is to request a new test claim decision from the Commission pursuant to

[Government Code section 17570](#). (See [County of San Diego v. Commission on State Mandates](#) (2018) 6 Cal.5th 196, 202–203, 240 Cal.Rptr.3d 52, 430 P.3d 345.)

In evaluating this claim, we begin by noting that the Legislature established the Commission as a “quasi-judicial body” tasked with identifying state mandates and calculating the costs of those mandates for purposes of reimbursement. ([Gov. Code, § 17500](#).) The Legislature’s objective in creating the Commission was to reduce “reliance by local agencies and school districts on the judiciary” and “relieve unnecessary congestion of the judicial system.” (*Ibid.*) Under the scheme adopted by the Legislature, the Commission’s [**972](#) mandate determinations are subject to judicial review, but only “on the ground that the commission’s decision is not supported by substantial evidence.” ([Gov. Code, § 17559, subd. \(b\)](#).)

[*731](#) The Court of Appeal in [California School Boards](#) opined that “[o]nce the Commission’s decisions are final, whether after judicial review or without judicial review, they are binding, just as are judicial decisions. ... Therefore, like a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure. ([Gov. Code, § 17559, subd. \(b\)](#).)” ([California School Boards, supra](#), 171 Cal.App.4th at p. 1201, 90 Cal.Rptr.3d 501.) The court there found that various legislative directives to set aside or reconsider test claim decisions by the Commission had the effect of “nullify[ing] the finality of specific Commission decisions. Such a case-by-case legislative abrogation of Commission decisions violates the separation of powers doctrine.” (*Ibid.*)

^[7]We have not had occasion to decide whether a final decision by the Commission is fully analogous to a judicial decision or whether the Legislature violates the separation of powers when it enacts a statute countermanding or modifying a decision by the Commission, which is itself a creature of statute. “Although the language of [California Constitution article III, section 3](#), may suggest a sharp demarcation between the operations of the three branches of government, California decisions long have recognized that, in reality, the separation of powers doctrine ‘does not mean that the three departments of our government are not in many respects mutually dependent’” [citation], or that the actions of one branch may not significantly affect those of another branch.” ([Superior Court v. County of Mendocino](#) (1996) 13 Cal.4th 45, 52, 51 Cal.Rptr.2d 837, 913 P.2d 1046; see [Carmel Valley, supra](#), 25 Cal.4th at p. 298, 105 Cal.Rptr.2d 636, 20 P.3d 533.) The constitutional

issues discussed by the Court of Appeal in *California School Boards* are not insubstantial, and we do not resolve them here. For purposes of addressing CSBA's argument, we assume without deciding that a legislative enactment negating a mandate determination that has become final may violate the separation of powers. Even so, we find no separation of powers violation because no such negation has occurred here.

While acknowledging that "the 2010 legislation," unlike the statutes at issue in *California School Boards*, "did not directly set aside the original mandate determinations," CSBA argues that ***602 [Education Code sections 42238.24](#) and [56523\(f\)](#), together with [Government Code section 17557\(d\)\(2\)\(B\)](#), "had exactly the same practical effect." But the two-step framework governing state mandates distinguishes the initial mandate determination from the subsequent determination of how mandate costs are to be reimbursed. The operation of the 2010 statutes to update reimbursement parameters and guidelines to account for offsetting revenues does not disturb the underlying GR and BIP mandate determinations. Those determinations and the reimbursement obligations they entail remain in effect. (See *732 [Gov. Code, § 17557, subd. \(d\)\(2\)](#) [any "request to amend parameters and guidelines" must be "consistent with the [Commission's prior] statement of decision"].) Indeed, CSBA concedes that "the State's position means that districts that do not receive unrestricted state funding (basic aid districts) *would be entitled to receive mandate reimbursement* while districts receiving state funding would not." Although this observation may raise questions of fairness, it confirms that the statutes at issue do not nullify any mandate determinations. Going forward, if the Legislature were to alter the funding directives in [Education Code sections 42238.24](#) and [56523\(f\)](#) in a manner that did not cover the costs of the GR and BIP mandates, then the state would remain legally obligated to cover those costs, with no need for a new mandate determination. Respondents make clear in their briefing that they "do not contend that BIP and graduation requirements are *not* mandates, in light of the statutory enactments at issue."

**973 CSBA claims that the Commission's mandate determination is effectively abrogated when the Legislature identifies "the very same funding" already rejected as offsetting revenue for purposes of mandate determination under [Government Code section 17556\(e\)](#) and relabels it "offsetting revenue" for purposes of

calculating the amount of reimbursement due under [Government Code section 17557\(d\)\(2\)\(B\)](#). As respondents explain, however, the character of the funding in this case differed materially from one point in time to the other: "At the time of the Commission's initial determination that these programs constitute reimbursable mandates, there was no specific legislation directing that specific state funding sources be used to offset the costs of the mandates before claiming reimbursement. Later, the Legislature, as is within its power, specified how the mandates must be paid. That did not alter or impact the Commission's original decisions in any way."

In sum, we hold that mandate reimbursement as provided by the statutes at issue here does not negate the Commission's mandate determinations and therefore does not violate the separation of powers.

CONCLUSION

We affirm the judgment of the Court of Appeal.

We Concur:

[CANTIL-SAKAUYE, C. J.](#)

[CHIN, J.](#)

[CORRIGAN, J.](#)

[CUÉLLAR, J.](#)

[KRUGER, J.](#)

[GROBAN, J.](#)

All Citations

8 Cal.5th 713, 454 P.3d 962, 256 Cal.Rptr.3d 590, 373 Ed. Law Rep. 973, 19 Cal. Daily Op. Serv. 12,107, 2019 Daily Journal D.A.R. 11,837

59 Cal.App.5th 546
Court of Appeal, Second District, Division 1,
California.

DEPARTMENT OF FINANCE et al.,
Plaintiffs and Respondents,
v.
COMMISSION ON STATE MANDATES,
Defendant and Respondent;
County of Los Angeles et al., Real Parties
in Interest and Appellants.
County of Los Angeles et al.,
Cross-complainants and Appellants,
v.
Commission on State Mandates,
Cross-defendant and Respondent;
Department of Finance et al.,
Cross-Real Parties in Interest and
Respondents.

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Filed 1/4/2021

Synopsis

Background: Department of Finance, State Water Resources Control Board, and regional water quality control board filed petition for writ of administrative mandamus seeking to overturn decision of Commission on State Mandates that regional board's condition on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops, constituted a reimbursable state mandate, and local governments filed cross-petition, challenging the Commission's determination that requirement that they periodically inspect commercial facilities, industrial facilities, and construction sites to ensure compliance with various environmental regulatory requirements, was not a reimbursable state mandate. The Superior Court, Los Angeles County, No. BS130730, [Ann I. Jones, J.](#), granted petition, and denied cross-petition as moot. Local governments appealed. The Second District Court of Appeal affirmed. Local governments petitioned for review. The Supreme Court, [1 Cal.5th 749, 207 Cal.Rptr.3d 44, 378 P.3d 356](#), reversed. The Superior Court, [Amy D. Hogue, J.](#), again granted petition. Local governments appealed.

Holdings: The Court of Appeal, [Rothschild](#), Presiding Justice, held that:

[1] conditions constituted new programs or higher levels of service, for purposes of state constitutional provision requiring the state to pay for such programs that it imposes upon local governments;

[2] local governments had authority to levy a fee on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements; and

[3] local governments did not have authority to charge a fee to transit agencies or adjacent property owners to install and maintain trash receptacles at transit stops.

Reversed.

West Headnotes (31)

[1] **States** — State expenses and charges and statutory liabilities

Adjudication by the Commission on State Mandates of a test claim governs all subsequent claims based on the same statute. [Cal. Gov't Code § 17521](#).

[2] **States** — State expenses and charges and statutory liabilities

The Commission on State Mandates, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists.

[3] **States** → State expenses and charges and statutory liabilities

On appeal from the trial court's decision, reviewing a decision of the Commission on State Mandates, appellate review of disputed factual determinations is the same as the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record; however, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions and, more particularly, the determination that permit conditions requiring installation of trash receptacles at transit stops and periodic inspection to ensure compliance with environmental regulations are state mandates.

[4] **States** → State expenses and charges and statutory liabilities

Supreme Court's statement that state agencies and local governments did not dispute that each challenged condition on permit authorizing local governments to operate storm drain systems was a new program or higher level of service, did not constitute a rule of law necessary to the decision of the case, and thus, was not law of the case, for purposes of action brought by state agencies seeking to overturn decision of Commission on State Mandates that regional board's condition on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops, constituted a reimbursable state mandate.

[5] **Appeal and Error** → As law of the case in general
Appeal and Error → Decision of Reviewing Court as Law of the Case in Lower Court

Under the law of the case doctrine, an appellate court, stating a rule of law necessary to the

decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.

[6] **Appeal and Error** → Matters which could have been raised or determined on prior review
Appeal and Error → Matters expressly or implicitly determined on prior review

Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in a prior appeal; however, an exception to this rule applies when a question is implicitly decided because it was essential to the appellate court's decision.

[7] **Municipal Corporations** → Limitation on use of funds or credit in general
States → Limitation of amount of indebtedness or expenditure

The California Constitution generally restricts the amounts state and local governments may appropriate and spend each year from the proceeds of taxes. Cal. Const. art. 13B, § 1 et seq.

[8] **States** → State expenses and charges and statutory liabilities

The state, with certain exceptions, must pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. Cal. Const. art. 13B, § 6.

applies. Cal. Const. art. 13B, § 6.

[9] **States** → State expenses and charges and statutory liabilities

The phrase “higher level of service” in state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies, refers to state mandated increases in the services provided by local agencies in existing programs. Cal. Const. art. 13B, § 6.

[10] **States** → State expenses and charges and statutory liabilities

Whether a program is “new” or provides a “higher level of service,” under state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies, is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law. Cal. Const. art. 13B, § 6.

[11] **States** → State expenses and charges and statutory liabilities

“Programs,” for purposes of state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies, are programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state; the two parts of the definition are alternatives, and either will trigger the subvention obligation unless an exception

[12] **States** → State expenses and charges and statutory liabilities

Conditions on permit authorizing local governments to operate storm drain systems, requiring local governments to install and maintain trash receptacles at transit stops and to periodically inspect various facilities to ensure compliance with environmental regulatory requirements, constituted new programs or higher levels of service, for purposes of state constitutional provision requiring the state to pay for such programs that it imposes upon local governments; both requirements increased the level of service provided by the existing stormwater drainage system, but also imposed new requirements on local governments, and alternatively, both were requirements unique to local governments to implement state policy. Cal. Const. art. 13B, § 6.

[13] **Environmental Law** → Discharge of pollutants

Local governments are required under federal and state law to obtain a permit for any discharge from a municipal storm sewer system serving a population of 100,000 or more; the permit must effectively prohibit non-stormwater discharges into the storm sewers, and must require controls to reduce the discharge of pollutants to the maximum extent practicable.

[14] **Environmental Law** → Discharge of pollutants

Although a storm sewer system operator must propose management practices, control techniques, and system, design, and engineering methods to reduce the discharge of pollutants to

the maximum extent practicable, it is the permit-issuing agency that determines which practices, whether or not proposed by the applicant, will be imposed as conditions.

[15] States → State expenses and charges and statutory liabilities

State agencies have the burden of demonstrating the applicability of statutory exceptions to the subvention requirement under state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies. Cal. Const. art. 13B, § 6; Cal. Gov't Code § 17556(d).

[16] Municipal Corporations → Nature and scope of power of municipality

A city or county's powers to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, are known generally as the police powers of local government. Cal. Const. art. 11, § 7.

[17] Municipal Corporations → Power and Duty to Tax in General

The police powers of local government includes the authority to impose a regulatory fee to further the purpose of a valid exercise of those powers. Cal. Const. art. 11, § 7.

[18] Municipal Corporations → Power and Duty to Tax in General

The services for which a regulatory fee may be charged, pursuant to the police powers of local government, include those that are incident to the issuance of a license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement. Cal. Const. art. 11, § 7.

[19] Municipal Corporations → Power and Duty to Tax in General

A regulatory fee is valid pursuant to the police powers of local government if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers' activities or operations or the benefits the fee payers receive from the regulatory activity. Cal. Const. art. 11, § 7.

[20] Municipal Corporations → Power and Duty to Tax in General

The third element to the question of whether a regulatory fee is valid under the police powers of local governments, that is, if the amount of the fee bears a reasonable relationship to the burdens created by the fee payers' activities or operations or the benefits the fee payers receive from the regulatory activity, is a question of fair allocation that considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs. Cal. Const. art. 11, § 7.

[21] **Taxation** — Distinguishing “tax” and “license” or “fee”

Whether a statute imposes a fee or a tax is a question of law to be decided upon an independent review of the record.

under statute, nor was there any indication that the Legislation intended to occupy the field of stormwater program inspections or inspection fees. Cal. Const. art. 11, § 7; Cal. Gov’t Code § 17556(d); Cal. Water Code § 13260(d)(2)(B)(iii).

[22] **Municipal Corporations** — Sewer service fees

Based upon the local governments’ constitutional police power and their ability to impose a regulatory fee that does not exceed the reasonable cost of the inspections, is not levied for unrelated revenue purposes, and is fairly allocated among fee payers, local governments had authority to levy a fee on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements, as required by permit authorizing local governments to operate storm drain systems; permit’s inspection requirements and statute requiring regional water quality control boards to use a portion of fees they received from certain waste dischargers for stormwater inspection and regulatory compliance issues could be applied without duplication or conflict. Cal. Const. art. 11, § 7; Cal. Gov’t Code § 17556(d); Cal. Water Code § 13260(d)(2)(B)(iii).

[24] **Municipal Corporations** — Conformity to constitutional and statutory provisions in general

Under the doctrine of preemption, a local ordinance that conflicts with state law is preempted by the state law and void.

[25] **Municipal Corporations** — Conformity to constitutional and statutory provisions in general

A conflict exists between a local ordinance and state law, and thus, the local law is preempted, if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.

[23] **Municipal Corporations** — Surface water

A regulatory fee local governments could impose on businesses to cover their costs of inspecting various facilities to ensure compliance with environmental regulatory requirements, as required by permit authorizing local governments to operate storm drain systems, would not be preempted by statute obligating waste dischargers to pay annual fees to the state, and requiring some of those fees be used for stormwater inspection and regulatory compliance issues; there was no evidence that a local government’s inspection fee would necessarily duplicate the annual fees imposed

[26] **Municipal Corporations** — Conformity to constitutional and statutory provisions in general

A local ordinance duplicates state law, and thus, is preempted, when it is coextensive with state law.

[27] **Municipal Corporations** — Persons and Property Taxable
States — State expenses and charges and statutory liabilities

Local governments did not have authority to

charge a fee to transit agencies to install and maintain trash receptacles at transit stops, under statute allowing one public agency to impose a fee for a public utility service provided to another public agency, as would provide an exception to subvention under state constitutional provision requiring the state to pay for new governmental programs, or for higher levels of service under existing programs, that it imposes upon local government agencies; transit authority was not a public utility customer that solicited installation and ongoing maintenance of trash receptacles. [Cal. Const. art. 13B, § 6](#); [Cal. Gov't Code §§ 17556\(d\), 54999.7](#).

[28] Municipal Corporations  **Persons and Property Taxable**

Statutory reference to the power of one public agency to impose a fee for a public utility service provided to another public agency contemplates that the receiving public agency is a public utility customer that solicited and uses the services for which it is charged; the statute does not permit one public entity to simply install equipment on another public entity's premises and then charge the other entity for their installation and ongoing maintenance. [Cal. Gov't Code § 54999.7](#).

[29] Municipal Corporations  **Persons and Property Taxable**

Department of Finance, State Water Resources Control Board, and regional water quality control board did not satisfy their burden of demonstrating that local governments had authority to impose a fee on adjacent property owners for installing and maintaining trash receptacles at transit stops; not only did department and board fail to cite to authority to support point that a fee imposed on property owners adjacent to transit stops could satisfy substantive requirements of constitutional

provision placing requirements on charges, fees, and assessments on real property, but common sense dictated that vast majority of persons who would use and benefit from receptacles were not the owners of adjacent properties but rather pedestrians, transit riders, and other members of the general public. [Cal. Const. art. 13D, §§ 4, 6](#).

[30] Municipal Corporations  **Persons and Property Taxable**

A fee imposed on transit agencies or adjacent property owners by local governments, for installing and maintaining trash receptacles at transit stops, under statute generally authorizing fees in connection with water, sanitation, storm drainage, or sewerage systems, could not survive scrutiny under constitutional provision imposing limits on local government fees; vast majority of persons who would use and benefit from receptacles were pedestrians, transit riders, and other members of the general public. [Cal. Const. art. 13D, §§ 4, 6](#); [Cal. Health & Safety Code § 5471](#).

[31] Municipal Corporations  **Persons and Property Taxable**

A fee imposed on transit agencies or adjacent property owners by local governments, for installing and maintaining trash receptacles at transit stops, under statute reserving to local governments decisions concerning waste management that are of local concern, could not survive scrutiny under constitutional provision imposing limits on local government fees; vast majority of persons who would use and benefit from receptacles were pedestrians, transit riders, and other members of the general public. [Cal. Const. art. 13D, §§ 4, 6](#); [Cal. Pub. Res. Code § 40059](#).

Witkin Library Reference: [9 Witkin, Summary of Cal. Law \(11th ed. 2017\) Taxation, § 120](#) [Reimbursement of Local Costs;

Reimbursement Required.]

****624** APPEAL from a judgment of the Superior Court of Los Angeles County, [Amy Hogue](#), Judge. Reversed with directions. (Los Angeles County Super. Ct. No. BS130730)

Attorneys and Law Firms

[Mary C. Wickham](#), County Counsel, [Robert C. Cartwright](#), Assistant County Counsel, [Michael S. Simon](#), Deputy County Counsel for Real Party in Interest, Cross-complainant and Appellant County of Los Angeles.

Burhenn & Gest LLP, [David Burhenn](#), and [Howard Gest](#), Los Angeles, for Real Parties in Interest, Cross-complainants and Appellants County of Los Angeles, City of Bellflower, City of Carson, City of Commerce, City of Downey, and City of Signal Hill.

[Karl H. Berger](#), City Attorney, and [Timothy E. Campen](#), Deputy City Attorney for Real Party in Interest, Cross-complainant and Appellant City of Bellflower.

Best Best & Krieger, [Shawn D. Hagerty](#) and [Rebecca Andrews](#), San Diego, for County of San Diego, Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Marcos, Santee, Solana Beach, and Vista as Amici Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

[Thomas E. Montgomery](#), County Counsel (San Diego), and [Christina Snider](#), Deputy County Counsel, for California State Association of Counties as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

Meyers, Nave, Riback, Silver & Wilson, [Gregory J. Newmark](#) and [Bryan K. Brown](#), Los Angeles, for Alameda Countywide Clean Water Program as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

Somach Simmons & Dunn, [Theresa A. Dunham](#) and [Roberta Larson](#), Sacramento, for California Stormwater Quality Association as Amicus Curiae on behalf of Real Parties in Interest, Cross-complainants and Appellants.

[Xavier Becerra](#), Attorney General, [Thomas S. Patterson](#), Assistant Attorney General, [Tamar Pachter](#), Anthony R. Hakl, [Nelson R. Richards](#), and Ryan A. Hanley, Deputy Attorneys General for Plaintiffs, Cross-Real Parties in Interest and Respondents Department of Finance, State Water Resources Control Board, Regional Water Quality Control Board, Los Angeles Region.

No appearance for Defendant, Cross-defendant and Respondent Commission on State Mandates.

Opinion

[ROTHSCHILD](#), P. J.

****625 *552** The Regional Water Quality Control Board, Los Angeles Region (the Regional Board) issued a permit authorizing the County of Los Angeles (the County) and certain cities (collectively, the Operators) to operate stormwater drainage systems. The permit requires the Operators (1) to install and maintain trash receptacles at transit stops (the trash receptacle requirement) and (2) periodically inspect commercial facilities, industrial facilities, and construction sites to ensure compliance with various environmental regulatory requirements (the inspection requirements). Some of the Operators filed claims with the Commission on State Mandates (the Commission) seeking a determination that the state must reimburse them for the costs related to the trash receptacle and inspection requirements pursuant to [article XIII B, section 6 of the California Constitution](#) (section 6). The Commission determined that the trash receptacle requirement is a reimbursable state mandate and that the inspection requirements are not.

The Department of Finance, State Water Resources Control Board, and the Regional Board (collectively, the state agencies) filed a petition in the superior court for a writ of administrative mandamus to command the ***553** Commission to set aside its decision concerning the trash receptacle requirement.¹ The County and the Cities of Bellflower, Carson, Commerce, Covina, Downey, Signal Hill (collectively, the local governments) filed a cross-petition challenging the Commission's decision as to the inspection requirements. The superior court granted the state agencies' petition and denied the cross-petition as moot. The local governments appealed. We agree with the Commission that the trash receptacle requirement requires subvention and the inspection requirements do not. We therefore reverse the judgment of the superior court.

FACTUAL AND PROCEDURAL SUMMARY

In December 2001, the Regional Board issued its permit No. 01-182 (the permit) concerning waste discharge requirements for municipal stormwater and urban runoff **626 discharges within Los Angeles County and certain cities in the Los Angeles County Flood Control District. The permit includes the trash receptacle requirement² and inspection requirements.³

^[1]In 2003, the local governments, among others, filed test claims⁴ with the Commission seeking subvention of funds to cover the costs of the trash *554 receptacle and inspection requirements pursuant to section 6.⁵ That section provides generally that the state must reimburse local governments for the costs of any state-mandated “new program or higher level of service.” (Cal. Const., art. XIII B, § 6, subd. (a).) This general rule does not apply under certain circumstances, such as when the requirement is mandated by federal law or the local agency has the authority to levy fees sufficient to pay for the program or increased level of service. (Gov. Code, § 17556, subds. (c) & (d).)

In July 2009, the Commission determined that the challenged requirements imposed new programs or higher levels of service within the meaning of section 6. Because no exception applied to the trash receptacle requirement, subvention was required to reimburse the local governments for the cost of complying with the requirement. The Commission determined that subvention was not required for the cost of complying with the inspection requirements, however, because the local governments have the authority to impose fees that could pay for the required inspections. (See Gov. Code, § 17556, subd. (d).)

In February 2011, the state agencies filed a petition for writ of administrative **627 mandamus challenging the Commission’s decision on three grounds: (1) the challenged requirements are mandated by federal law; (2) the challenged requirements do not impose new programs or higher levels of service; and (3) subvention for the costs of complying with the trash receptacle requirement is not required because the local governments have authority to levy fees to cover such costs. The local governments filed a cross-petition challenging the Commission’s determination that the local governments could levy fees to cover the costs of the required inspections.

In August 2011, the trial court granted the state agencies’ petition on the ground that the challenged conditions impose requirements mandated by federal law and, therefore, the costs of complying with the requirements

are not reimbursable. (See Gov. Code, § 17556, subd. (c).) The court did not address the other arguments by the state agencies or the local governments’ cross-petition. After we affirmed the court’s decision in October 2013, the Supreme Court reversed. (*Department of Finance, supra*, 1 Cal.5th at p. 772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The Supreme Court held that the federal mandate exception did not apply to the challenged requirements. (*555 *Department of Finance, supra*, 1 Cal.5th at pp. 771–772, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The Court directed the trial court to address the remaining issues raised by the petition and cross-petition. (*Id.* at p. 772, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

In February 2018, the trial court again granted the state agencies’ petition, this time on the ground that neither the trash receptacle requirement nor the inspection requirements are state mandated programs within the meaning of section 6. The local governments’ cross-petition was therefore moot. The court did not reach the parties’ arguments concerning the local governments’ authority to levy fees to pay for the costs of implementing the requirements.

The local governments timely appealed.

The parties briefed issues arising from the trial court’s ruling that the trash receptacle requirement and inspection requirements are not state mandates. In June 2020, we requested the parties further brief the questions whether the Commission erred in finding that (1) the costs of the trash receptacle requirement are costs mandated by the state, and (2) the costs of the challenged inspection requirements are not costs mandated by the state. In October 2020, we requested further supplemental briefing to address the questions whether [Health and Safety Code section 5471](#) or [Government Code section 54999.7](#) provide the local governments with the authority to levy service charges, fees, or assessments sufficient to pay for the trash receptacle requirement. We received and have considered the requested supplemental briefs.

DISCUSSION

A. Standards of Review

^[2] ^[3] “[T]he Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state

mandate exists.” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 819, 38 Cal.Rptr.2d 304.) Review of its decisions is by writ of administrative mandamus to the trial court. (Gov. Code, § 17559, subd. (b).) On appeal from the trial court’s decision, our review of disputed factual determinations is the same as “the trial court, that is, to review the administrative decision to determine whether it is supported by substantial evidence on the whole record.” (**628 *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 814, 38 Cal.Rptr.2d 304; accord, *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 185, 244 Cal.Rptr.3d 769 (*Paradise Irrigation*)). However, we “independently review[] conclusions as to the meaning and effect of constitutional and statutory provisions” and, more particularly, the determination that the permit conditions are state mandates. (*Department of Finance*, *supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

*556 B. New Program or Higher Level of Service⁶

[4] [5] [6] [7] [8] In 1979, the California electorate added article XIII B to our state constitution. That article generally “restricts the amounts state and local governments may appropriate and spend each year from the ‘proceeds of taxes.’ ” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58–59, 266 Cal.Rptr. 139, 785 P.2d 522.) The drafters of the initiative perceived that the restriction on state government spending could result in attempts by legislators seeking to establish or expand a government program to require local governments implement the desired program, thus effectively shifting the **financial** responsibility for the program to the local governments. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235.) To protect local governments from such attempts, the drafters included section 6, which provides that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the [s]tate shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service.” (Cal. Const., art. XIII B, § 6, subd. (a); see *Department of Finance*, *supra*, 1 Cal.5th at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356.) “As a result, the state ..., with certain exceptions, must ‘pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.’ ” (*County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196,

207, 240 Cal.Rptr.3d 52, 430 P.3d 345.)

[9] [10] The phrase “higher level of service” in section 6 refers to “state mandated increases in the services provided by local agencies in existing ‘programs.’ ” (**629 *557 *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) Whether a program is “new” or provides a “higher level of service” is determined by comparing the legal requirements before and after the issuance of the executive order or the change in law. (See, e.g., *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego U.S.D.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.)

[11] The term, “program,” is not defined in section 6. Our Supreme Court has established a two-part definition. Programs, for purposes of section 6, are “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The two parts are alternatives; either will trigger the subvention obligation unless an exception applies. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537, 234 Cal.Rptr. 795 (*Carmel Valley*)).

State mandates that satisfy the first part of the definition—i.e., the program carries out a governmental function of providing services to the public—are illustrated in a line of cases that includes *San Diego U.S.D.*, *supra*, 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, *Carmel Valley*, *supra*, 190 Cal.App.3d 521, 234 Cal.Rptr. 795, and *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 275 Cal.Rptr. 449 (*Long Beach*).

In *San Diego U.S.D.*, the court considered a state law that required public school principals to suspend immediately any student who possesses a firearm at school and make a recommendation to the school district board that the student be expelled. (*San Diego U.S.D.*, *supra*, 33 Cal.4th at pp. 867–871, 16 Cal.Rptr.3d 466, 94 P.3d 589.) In that situation, the law further requires that the suspended student be entitled to a hearing and other procedural protections prior to expulsion. (*Id.* at p. 866, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The San Diego Unified School District contended that the cost associated with such procedural protections were reimbursable under

section 6, and the Supreme Court agreed. (*Id.* at pp. 877–878, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The new law required subvention because “public schooling ... constitutes a governmental function” (*id.* at p. 879, 16 Cal.Rptr.3d 466, 94 P.3d 589), and the mandatory suspension of students who possess firearms provided “a ‘higher level of service’ to the public,” specifically, safer schools for other students. (*Id.* at p. 878, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In *Carmel Valley*, the County of Los Angeles sought reimbursement from the state for the increased costs of complying with an executive order that established minimum requirements for protective clothing and equipment for firefighters. (*Carmel Valley, supra*, 190 Cal.App.3d at pp. 530–531, 234 Cal.Rptr. 795.) The *558 Court of Appeal stated that firefighting is a “peculiarly governmental function” that provides services to the public and held that the cost of complying with the new requirements required subvention under section 6. (*Id.* at p. 537, 234 Cal.Rptr. 795.) The Supreme Court later explained the holding in *Carmel Valley* by stating that subvention was required in that case because the “increased safety equipment apparently was designed to result in more **630 effective fire protection” and thus “intended to produce a higher level of service to the public.” (*San Diego U.S.D., supra*, 33 Cal.4th at p. 877, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In *Long Beach*, a school district sought subvention under section 6 for costs associated with an executive order that required school districts to “develop and adopt a reasonably feasible plan for the alleviation and prevention of racial and ethnic segregation of minority students.” (*Long Beach, supra*, 225 Cal.App.3d at p. 165, 275 Cal.Rptr. 449.) Although school districts had an existing “constitutional obligation to alleviate racial segregation,” the “specific actions” required by the executive order constituted a “higher level of service” requiring reimbursement under section 6. (*Id.* at p. 173, 275 Cal.Rptr. 449.)

^[12]Turning to the instant case, there are three pertinent governmental functions implicated by the challenged requirements for purposes of section 6: The operation of stormwater drainage and flood control systems; the installation and maintenance of trash receptacles at transit stops; and the inspection of commercial, industrial, and construction facilities and sites to ensure compliance with environmental laws and regulations. The first existed prior to the Regional Board’s permit; the other two are new. Each is a governmental function that provides services to the public, and the carrying out of such functions are thus programs under the first part of the

Supreme Court’s definition of that term.

In the case of the provision of stormwater drainage and flood control services, the trash receptacle requirement provides a higher level of service because it, together with other requirements, will reduce pollution entering stormwater drainage systems and receiving waters. In addition, litter will presumably be reduced at transit stops and adjacent streets and sidewalks; as the local governments put it, the “community is cleaner as a result.”

The inspection requirements provide a higher level of service because they promote and enforce third party compliance with environmental regulations limiting the amount of pollutants that enter storm drains and receiving waters.

Alternatively, the trash receptacle services and inspections can be viewed, as the Commission viewed them, as government functions that provide services to the public. That is, even if the installation and maintenance of trash receptacles at transit stops does not result in a higher level of stormwater drainage and flood control services, trash collection is itself a government *559 function that provides a service to the public by producing cleaner transit stops, sidewalks, streets, and, ultimately, stormwater drainage systems and receiving waters. Under this view, the mandate to install and maintain trash receptacles at transit stops is a “new program” within the meaning of section 6 because it was not required prior to the Regional Board’s issuance of the permit. Similarly, the inspection requirements not only increase the level of service provided by the existing stormwater drainage and flood control system, but also constitute new programs mandated by the state to ensure third party compliance with environmental regulations.

The challenged requirements also meet the alternative test of a “program”—i.e., a law or order that “impose[s] unique requirements on local governments” “to implement a state policy.” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) This alternative was addressed in *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 263 Cal.Rptr. 351. In that case, the **631 California Occupational Safety and Health Administration promulgated new earthquake and fire safety regulations concerning elevators. (*Id.* at p. 1540, 263 Cal.Rptr. 351.) The County of Los Angeles, which owns buildings with elevators, filed a claim for reimbursement for the cost of complying with the regulations. The Court of Appeal affirmed the trial court’s rejection of the claim, holding that the regulations did not

impose a unique requirement on local governments because the regulations applied “to all elevators, not just those which are publicly owned.” (*Id.* at p. 1545, 263 Cal.Rptr. 351.)

A similar result was reached in *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, where the enactment of laws that increased the amounts that all employers, including local governments, must pay in worker’s compensation benefits, did not impose unique requirements on local governments. (*Id.* at pp. 57–58, 233 Cal.Rptr. 38, 729 P.2d 202.) By contrast, the requirements for protective clothing and equipment for firefighters in *Carmel Valley* imposed unique requirements on local agencies because they applied “only to those involved in fire fighting” and “fire fighting is overwhelmingly engaged in by local agencies.” (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 538, 234 Cal.Rptr. 795; see also *San Diego U.S.D.*, *supra*, 33 Cal.4th at p. 877, 16 Cal.Rptr.3d 466, 94 P.3d 589 [law requiring procedural protections prior to student expulsion imposed unique requirements on school districts].)

The pertinent state policy, as expressed in the Regional Board’s permit, is “to protect the beneficial uses of receiving waters in Los Angeles County” and “reduce the discharge of pollutants in storm water to the maximum extent practicable.” The challenged requirements are unique to local governments in two ways. First, as the Commission found, the Regional Board’s permit applies by its terms only to the local governmental entities identified in the *560 permit; no one else is bound by it. Second, the activities compelled by the challenged requirements—collecting trash at transit stops and inspecting businesses and construction sites to ensure environmental regulatory compliance—are, like the firefighting services in *Carmel Valley*, typically within the purview of government agencies. The requirements therefore constitute programs within the meaning of both alternative definitions. By requiring the local governments to comply with the trash receptacle and inspection requirements, the state agencies have effectively shifted the **financial** responsibility for such programs to the local governments.

The trial court agreed with the state agencies that the trash receptacle and inspection requirements are mere manifestations of policies to prohibit pollution. As the trial court stated, the requirements “enforce a prohibition rather than initiate or upgrade ‘classic’ or ‘peculiarly governmental functions[s]’ like the firefighting services affected by the executive order in *Carmel Valley*.... Because the requirements were implemented to prevent pollution (enforce a ban on pollution) rather than to

provide a service to the public, it is difficult to regard them as ‘programs that carry out the governmental function of providing services to the public.’ ” This view, however, ignores the terms of the Regional Board’s permit; the challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions—installing and maintaining trash receptacles and inspecting business sites—that the local governments were not previously required to perform. Although the purpose of requiring trash collection at transit stops and business site inspections was undoubtedly to reduce pollution in waterways, the state sought to **632 achieve that goal by requiring local governments to undertake new affirmative steps resulting in costs that must be reimbursed under section 6.

Lastly, the state agencies assert that the challenged requirements are not state mandates because the local governments applied for the permit to operate their stormwater drainage systems and “chose a management permit rather than a numeric end-of-pipe permit.” That is, although the local governments could arguably have applied for a permit that simply mandated particular effluent limits on discharges—a so-called end-of-pipe permit—they elected to apply for a “management permit,” which imposes requirements designed to reduce the discharge of pollutants to the maximum extent practicable. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 659–660; 33 U.S.C. § 1342(p)(3)(B)(iii).) “Having elected a management permit that imposes the challenged conditions in lieu of more rigid requirements,” the state agencies argue, the local governments “should not be allowed to force the [s]tate to pay for that choice.”

[13] [14]The state agencies rely on *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (*561 *Kern High School District*). In that case, the Supreme Court held that school districts that voluntarily elect to participate in particular education-related programs were not entitled to subvention for costs required by such programs. (*Id.* at p. 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) This holding does not apply here, however, because, as our Supreme Court explained, the local governments are required under federal and state law to obtain a permit “for any discharge from a municipal storm sewer system serving a population of 100,000 or more.” (*Department of Finance*, *supra*, 1 Cal.5th at p. 757, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The permit “must effectively prohibit non-stormwater discharges into the storm sewers, and must ‘require controls to reduce the discharge of pollutants to the maximum extent practicable.’ ” (*Ibid.*, italics omitted.) Although the storm sewer system

operator must propose “management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable,” it is the “permit-issuing agency” that “determine[s] which practices, whether or not proposed by the applicant, will be imposed as conditions.” (*Ibid.*) Thus, as the Commission concluded, in contrast to the school districts’ participation in educational programs in *Kern High School District*, the local governments in the instant case “[did] not voluntarily participate” in applying for a permit to operate their stormwater drainage systems; they were required to do so under state and federal law and the challenged requirements were mandated by the Regional Board.

C. Whether the Local Government Can Levy Fees or Assessments to Pay for the Programs

¹⁵¹Under Government Code section 17556, subdivision (d), when, as here, the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” (Gov. Code, § 17556, subd. (d).) The state agencies have the burden of demonstrating the applicability of statutory exceptions to the subvention requirement. (*Department of Finance, supra*, 1 Cal.5th at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

****633** Here, the Commission determined that the local governments have the authority to levy service charges, fees, or assessments sufficient to pay for the inspection requirements, but not for the trash receptacle requirement. We agree with the Commission.

1. The Inspection Requirements

¹¹⁶Under article XI, section 7 of our state constitution, a “county or city may make and enforce within its limits all local, police, sanitary, and other ***562** ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) These powers are known generally as the police powers of local government. (*City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.5th 536, 544, 248 Cal.Rptr.3d 352, 442 P.3d 671.) The parties do not dispute that the challenged inspection requirements are within the government’s

police power. (See *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408, 95 Cal.Rptr. 852 [“prevention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised”]; *Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 764, 131 Cal.Rptr. 830 [local government may enter business property to make reasonable inspection for compliance with public health and safety regulations]; *Sullivan v. City of Los Angeles* (1953) 116 Cal.App.2d 807, 811, 254 P.2d 590 [city officials may inspect private property for compliance with sewage regulations].)

¹¹⁷ ¹¹⁸The police power also includes the authority to impose a regulatory fee to further the purpose of a valid exercise of that power. (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662, 166 Cal.Rptr. 674.) The services for which a regulatory fee may be charged include those that are “ ‘incident to the issuance of [a] license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.’ ” (*California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945, 94 Cal.Rptr.2d 535.)

¹¹⁹ ¹²⁰ ¹²¹A regulatory fee is valid “if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers’ activities or operations” or the benefits the fee payers receive from the regulatory activity. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046, 232 Cal.Rptr.3d 64, 416 P.3d 53, citing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 881, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) The third element is a question “of fair allocation” that “considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs.” (*California Building Industry Assn. v. State Water Resources Control Bd., supra*, at p. 1052, 232 Cal.Rptr.3d 64, 416 P.3d 53.) “Whether a statute imposes a fee or a tax is a question of law to be decided upon an independent review of the record.” (*Id.* at p. 1046, 232 Cal.Rptr.3d 64, 416 P.3d 53.)

¹²²Here, we are not faced with the question whether any ordinance imposing a fee on businesses to cover the local governments’ inspection costs constitutes a tax or regulatory fee; the issue is whether the local governments have the authority to levy such a fee “sufficient to pay for the mandated program or increased level of service.” (Gov. Code, § 17556, subd. (d).) We agree with ***563** the Commission that, based upon the local governments’

constitutional police power and their ability to impose a regulatory fee that (1) does not exceed the ****634** reasonable cost of the inspections, (2) is not levied for unrelated revenue purposes, and (3) is fairly allocated among the fee payers, the local governments have such authority.⁷

The local governments contend that they could not impose a fee for the costs of the inspections as to some businesses because the state already imposes a fee for industrial and construction site inspections, and the local governments are “constitutionally constrained from imposing a second fee for those same inspections.” Specifically, the local governments contend that the owners of some of the sites they must inspect pay fees to the state, a portion of which the Regional Board must spend “solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.” (Wat. Code, § 13260, subd. (d)(2)(B)(iii).) They argue that any regulatory fee the local governments impose for their inspections would duplicate the fees paid to the state and thus (1) exceed the reasonable cost of providing services for which the fee is charged and (2) not bear a fair or reasonable relationship to the pertinent burdens or benefits.⁸ This argument assumes that the local government’s inspection would replace or supplant inspections the Regional Board is required to conduct. The local governments, however, do not cite to the record or authority to support that assumption. Although Water Code section 13260 requires that regional boards use a portion of the fees they receive from certain waste dischargers for “stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs” (Wat. Code, § 13260, subd. (d)(2)(B)(iii)), nothing in the statute requires a regional board to inspect a fee payer’s site. Thus, the permit’s inspection requirements and Water Code section 13260 can be applied without duplication or conflict; the local governments can impose and collect a fee to cover the reasonable costs of the particular inspections they are required to undertake and the Regional Board can fulfill its expenditure requirements by addressing “stormwater inspection and regulatory compliance issues” in other ways. (Wat. Code, § 13260, subd. (d)(2)(B)(iii).)

^[23]The local governments further argue that, because any regulatory fee they could impose to pay for the required inspections would be duplicative of the ***564** fee some businesses are required to pay to the state under Water Code section 13260, the local government fee would be void under principles of preemption. We disagree.

^[24] ^[25] ^[26]Under the doctrine of preemption, a local

ordinance that conflicts with state law is preempted by the state law and void. (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067, 63 Cal.Rptr.3d 67, 162 P.3d 583.) Such a “ ‘ “conflict exists if the local legislation ‘ “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” ’ ’ ’ ’ ” (*Ibid.*) “A local ordinance *duplicates* state law when it is ‘coextensive’ with state law.” (*Ibid.*)

****635** The local governments have failed to show how a fee it could impose to pay for the required inspections conflicts with state law, specifically, Water Code section 13260. As discussed above, that statute obligates the waste dischargers described in that statute to pay annual fees to the state, and requires some of those fees be used for “stormwater inspection and regulatory compliance issues.” (Wat. Code, § 13260, subd. (d)(2)(B)(iii).) There is nothing in our record to indicate that a local government’s inspection fee would necessarily duplicate the annual fees imposed under Water Code section 13260; the local government fee would pay for the costs of the local government’s inspection and the fees paid to the state could be used for the activities required or permitted under state law other than the local government’s inspection. Nor does any provision within Water Code section 13260 imply that the Legislature intended to “occupy the field” of stormwater program inspections or inspection fees. Indeed, the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13000–16104), which includes Water Code section 13260, provides that its provisions do not limit “the power of a city or county ... to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state.” (Wat. Code, § 13002, subd. (a).) We therefore reject the local government’s preemption arguments.

The local governments also argue that a fee that must be no more than necessary to cover the reasonable costs of the inspections “would be difficult to accomplish.” They refer to problems that would arise from a general business license fee on all businesses, including those not subject to inspection, and to charging fees for inspections in years in which no inspection would take place. Even if we assume that drafting or enforcing a law that imposes fees to pay for inspections would be difficult, the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so. (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, 69 Cal.Rptr.2d 231.) As explained above, the police powers provision ***565** of the constitution and the judicial authorities we have cited provide that authority.

Moreover, as the Commission pointed out, at least one city—Covina—has enacted “stormwater inspection fees on [commercial establishments] ... expressly for the purpose of complying with the permit.”

2. The Trash Receptacle Requirement

The Commission determined that the local governments do not have the authority to levy charges, fees, or assessments to cover the costs of the trash receptacle requirement. In part, the Commission reasoned that, “[b]ecause the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks) or transit district property (for bus, metro, or subway stations), there are no entities on which the [local governments] would have authority to impose the fees.” (Fn. omitted.) The trash receptacle requirement, therefore, requires subvention **636 under section 6. The state agencies challenge this determination.

^{127]}In their initial appellate brief addressing this issue, the state agencies asserted that the local governments could have charged a fee to transit agencies or transit riders. They made the assertion, however, without citation to authority or evidence. We requested that the parties brief the question whether the local governments have authority to charge a fee to transit agencies pursuant to [Government Code section 54999.7](#). In response the state agencies argue that this statute provides such authority; the local governments contend it does not.

[Government Code section 54999.7](#), subdivision (a) provides: “Any public agency providing public utility service may impose a fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, and any public agency receiving service from a public agency providing public utility service shall pay that fee so imposed. Such a fee for public utility service, other than electricity or gas, shall not exceed the reasonable cost of providing the public utility service.” We agree with the local governments that their installation and maintenance of trash receptacles at transit stops pursuant to the permit is not a service “provided to a public agency” within the meaning of the statute.

The Legislature enacted [Government Code sections 54999](#) through [54999.7](#) to address fee disputes among public utilities, such as water districts, and *566 public agencies that received the services, such as school districts and state universities. (Assem. Floor Analysis, Assem. Bill No. 2951 (2005-2006 Reg. Sess.) as amended

Aug. 29, 2006, pp. 3–7.) These disputes and the Legislature’s responses have been shaped by the Supreme Court’s decision in *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935 (*San Marcos*). In that case, a school district connected its facilities to the water district’s sewer system and paid monthly service fees, which were not disputed. (*Id.* at pp. 158, 167, 228 Cal.Rptr. 47, 720 P.2d 935.) The water district, however, also charged a “capacity fee” to pay for capital improvements to the sewer system, which the school district challenged. (*Id.* at pp. 157–158, 228 Cal.Rptr. 47, 720 P.2d 935.) The Supreme Court held that the capacity fee constituted an assessment, which the school district, as a public agency, was not required to pay. (*Id.* at pp. 164–165, 228 Cal.Rptr. 47, 720 P.2d 935.) The court rejected the argument that the capacity fee was similar to a usage fee, which is “voluntary”—in the sense that it is the payer’s solicitation and utilization of the [public utility] service which triggers the charge.” (*Id.* at p. 161, 228 Cal.Rptr. 47, 720 P.2d 935.) A usage fee, the court noted, “typically is charged only to those who use the goods or services” and “is related to the actual goods or services provided to the payer.” (*Id.* at p. 162, 228 Cal.Rptr. 47, 720 P.2d 935.) The capacity fee, by contrast, was an “involuntary” assessment, which the school district did not agree to pay and the water district could not lawfully impose on its public entity customers. (*Ibid.*)

In 1988, the Legislature responded to the *San Marcos* decision by enacting [Government Code sections 54999](#) through [54999.6](#)—what courts have referred to as the *San Marcos* legislation. (*Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1189, 114 Cal.Rptr.2d 459, 36 P.3d 2 (*Utility Cost Management*); *Regents of University of California v. City and County of San Francisco* (2004) 115 Cal.App.4th 1109, 1111, 9 Cal.Rptr.3d 728 (*Regents*)). The *San Marcos* legislation authorized public **637 utilities to charge their public entity customers a “capital facilities fee” and required the public entities “receiving a public utility’s service” to pay the fee. ([Gov. Code, § 54999.2](#).) Subsequent litigation among public utilities and public agencies led the Legislature in 2006 to “fine-tune[]” the statutory scheme by adding [section 54999.7](#). (Assem. Floor Analysis, Assem. Bill No. 2951 (2005-2006 Reg. Sess.) as amended Aug. 29, 2006, p. 7.) In addition to [subdivision \(a\) of section 54999.7](#), quoted above, [subdivision \(b\)](#) requires the public utility to determine the amount of the fee for service provided to a public agency based on “the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant

factors.” (Gov. Code, § 54999.7, subd. (b).)

Although *San Marcos* and the legislation it evoked clarified the type of fees a public utility can charge public entities, the legislation contemplates that the public entity to whom the service is provided has generally agreed to *567 receive the utility’s services; that is, the public entity is a voluntary customer of the public utility. (See Assem. Floor Analysis, Assem. Bill No. 2951 (2005-2006 Reg. Sess.) as amended Aug. 29, 2006, p. 3 [Government Code section 54999.7 “authorizes a public agency utility to charge public agency customers rates or charges on the same basis as comparable nonpublic users, except for capital facilities fees”].) Thus, judicial decisions addressing the statutory scheme have arisen from disputes between public utilities and their customers. (See *Utility Cost Management*, supra, 26 Cal.4th at pp. 1188, 1194, 114 Cal.Rptr.2d 459, 36 P.3d 2 [assignee of Kern Community College District—a “customer” of the defendant water district—sued to recover sums allegedly charged in excess of limits under Government Code section 54999.3]; *Regents*, supra, 115 Cal.App.4th at p. 1111, 9 Cal.Rptr.3d 728 [University of California Regents sued provider of water and sewer services in case that “involves setting and collecting proper charges for public entities as customers of public utilities”].)

^[28]Viewed in this light, Government Code section 54999.7’s reference to the power of one public agency to impose a fee for a public utility service “provided to [another] public agency” contemplates that the receiving public agency is a public utility customer that solicited and uses the services for which it is charged. The statute does not permit one public entity to simply install equipment—such as trash receptacles—on another public entity’s premises and then charge the other entity for their installation and ongoing maintenance. We therefore reject the state agencies’ argument that the statute authorizes the local governments to impose on transit agencies service charges, fees, or assessments to pay the costs of complying with the trash receptacle requirement.

^[29]The state agencies focus their argument on the assertion that the local governments could levy a fee on property owners “in accordance with the burdens created and benefits enjoyed by each parcel.” As the state agencies acknowledge, levying a charge, fee, or assessment on property owners implicates article XIII D of our state constitution, enacted in 1996 as Proposition 218. That article places procedural and substantive requirements on charges, fees, and assessments on real property. Procedurally, article XIII D of the California Constitution provides generally for protest procedures and voter approval for fees and charges. (Cal. Const., art. XIII

D, § 6, subds. (a) & (c).) Substantively, a fee or charge may not be imposed on a parcel or upon a person as an incident **638 of property ownership unless, among other requirements, the fee or charge “[does] not exceed the proportional cost of the service attributable to the parcel,” the fee or charge is for a service that “is actually used by, or immediately available to, the owner of the property in question,” and it is not “imposed for general governmental services.” (Cal. Const., art. XIII D, § 6, subd. (b)(3)-(5).)

*568 The state agencies discuss at some length how the procedural requirements under article XIII D of the California Constitution do not apply to fees for sewer and refuse collection services and, if they do apply, they do not negate the local government’s authority to impose fees and charges to pay for the trash receptacle. (See Cal. Const., art. XIII D, § 6, subd. (d); §§ 53750, subd. (k), 53751, subd. (l); *Paradise Irrigation*, supra, 33 Cal.App.5th at p. 194, 244 Cal.Rptr.3d 769) They address only briefly, and unpersuasively, the substantive requirements that the trash collection service for which the fee or charge would be imposed must be used by or immediately available to the property in question and the fee cannot exceed the cost attributable to the parcel that is charged.

Under the state agencies’ theory, the local governments can charge any property owner “in the vicinity of the trash receptacles” installed at bus stops for the cost of collecting trash at the bus stop. The adjacent property owners, they argue, would benefit by the reduction of trash on the streets and sidewalks next to their properties.

Even if we assume that a fee imposed on adjacent property owners for trash collection at transit stops could overcome the procedural hurdles applicable to most fees, charges, and assessments imposed on property owners (see Cal. Const., art. XIII D, §§ 4, 6), the proponent of the fee would have to establish that the fee is for a service that is to some extent “attributable to the parcel,” that the “service is actually used by, or immediately available to, the owner of the property,” and that the service is not “for general governmental services ... where the service is available to the public at large in substantially the same manner as it is to property owners.” (*Id.*, art. XIII D, § 6, subd. (b)(3)-(5).) In a dispute between the property owner and a local government that has imposed such a fee, the local government would have the burden of proof on that issue. (*Id.*, art. XIII D, § 6, subd. (b)(5); *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 368, 188 Cal.Rptr.3d 130.) In the procedural situation in this case, however, it is the state agencies that are asserting that the local governments have authority to impose such a fee;

they therefore have the burden of proving that the local governments could satisfy these tests. (Cf. *Department of Finance, supra*, 1 Cal.5th at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356 [party claiming the applicability of federal mandate exception to subvention “bears the burden of demonstrating that it applies”].)

The state agencies have not satisfied their burden. Not only have the state agencies failed to cite to the record or authority to support the point that a fee imposed on property owners adjacent to transit stops could satisfy the substantive constitutional requirements, but common sense dictates that the vast majority of persons who would use and benefit from trash receptacles at transit stops are not the owners of adjacent properties but rather pedestrians, *569 transit riders, and other members of the general public; any benefit to property owners in the vicinity of bus stops would be incidental. Even if the state agencies could establish that the need for the trash receptacles is in part attributable **639 to adjacent property owners and that the property owners would use the trash receptacles (see *Cal. Const., art. XIII D, § 6, subd. (b)(3)–(4)*), the placement of the receptacles at public transit stops makes the “service available to the public at large in substantially the same manner as it is to property owners” (*id.*, *art. XIII D, § 6, subd. (b)(3)*). The state agencies, therefore, failed to establish that the local governments could impose on property owners adjacent to transit stops a fee that could satisfy these constitutional requirements.

^[30]In their briefs in the trial court, the state agencies relied on *Health and Safety Code section 5471*, but did not assert it in their respondents’ brief or first supplemental brief on appeal. We requested the parties address the issue in further supplemental briefs, which we have received. *Health and Safety Code section 5471, subdivision (a)* provides that “any entity shall have power, by an ordinance or resolution approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.” The local governments do not dispute that this statute generally authorizes fees to pay for the costs of complying with the trash receptacle requirement, but correctly assert the fee or charge must also comply with constitutional limits on local government fees. (See generally *Cal. Const., art. XIII D*.) To the extent a fee enacted under *Health and Safety Code section 5471* is imposed on transit agencies or property owners, it cannot survive scrutiny for the reasons explained above; and no cogent argument has been made as to how a fee could be

imposed on pedestrians or transit riders who would be the primary users and beneficiaries of the trash receptacles.

The state agencies rely on an opinion of the Attorney General which concludes that “[a] city may impose storm drainage pollution abatement charges with respect to property owned by school districts within the city’s boundaries to fund the city’s activities in meeting federal stormwater discharge requirements if the activities do not include the construction of capital improvements.” (84 *Ops.Cal.Atty.Gen. 61, 61 (2001)*.) The Attorney General’s opinion expressly assumes that a city would create “storm drainage services as a utility enterprise of the city” and pass “a resolution establishing storm drainage pollution abatement charges applicable to all parcels of property in the city, apportioned in accordance with a per-parcel runoff formula.” (*Id.* at p. 62.) The opinion implies that charges for storm drainage pollution abatement can be constitutionally imposed by allocating the costs of storm drainage services among all parcels of property based on the amount of *570 water that runs off each parcel. Without commenting on the correctness of the opinion, it is inapposite here. The state agencies are attempting to justify a fee imposed on parcels adjacent to transit stops to pay for the cost of trash collection at the transit stops. The Attorney General’s opinion offers no guidance on this issue.

^[31]Lastly, the state agencies assert that the local governments have authority to levy fees to pay for the trash receptacle requirements based on *Public Resources Code section 40059*. Subdivision (a) of that statute provides: “Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: [¶] (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means **640 of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.” This statute, enacted as part of the California Integrated Waste Management Act of 1989, reserves to local governments decisions concerning waste management that are of local concern. Although such decisions include “charges and fees,” this statute does not authorize local governments to impose charges and fees against persons or property without regard to the constitutional provisions discussed above.

DISPOSITION

The judgment is reversed. The court shall vacate its order

granting the state agencies' petition for writ of administrative mandamus and denying the local governments' cross-petition for writ of administrative mandamus as moot, and enter a new order denying both petitions.

The parties shall bear their own costs on appeal.

We concur.

Footnotes

- 1 The state agencies identified as real parties in interest: County of Los Angeles and the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palo Verdes, Signal Hill, Vernon, and Westlake Village.
- 2 The trash receptacle requirement is set forth in part 4.f.5.c.3 of the permit, which provides that the Operators shall "[p]lace trash receptacles at all transit stops within its jurisdiction" and that "[a]ll trash receptacles shall be maintained as necessary."
- 3 The inspection requirements were summarized by our Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 207 Cal.Rptr.3d 44, 378 P.3d 356 (*Department of Finance*) as follows:
"As to commercial facilities, [the permit] required each Operator to inspect each restaurant, automotive service facility, retail gasoline outlet, and automotive dealership within its jurisdiction, and to confirm that the facility employed best management practices in compliance with state law, county and municipal ordinances, a Regional Board resolution, and the Operators' stormwater quality management program (SQMP). For each type of facility, the [p]ermit set forth specific inspection tasks.
"[The permit] addressed industrial facilities, requiring the Operators to inspect them and confirm that each complied with county and municipal ordinances, a Regional Board resolution, and the SQMP. The Operators also were required to inspect industrial facilities for violations of the general industrial activity stormwater permit, a statewide permit issued by the State [Water Resources Control] Board that regulates discharges from industrial facilities." (*Department of Finance, supra*, 1 Cal.5th at p. 758, fn. 5, 207 Cal.Rptr.3d 44, 378 P.3d 356.)
"[The permit] required inspections for violations of the general construction activity stormwater permit, another statewide permit issued by the State Board." (*Department of Finance, supra*, 1 Cal.5th at p. 758, fn. 6, 207 Cal.Rptr.3d 44, 378 P.3d 356.)
- 4 A "[t]est claim" is "the first claim filed with the [C]ommission alleging that a particular statute or executive order imposes costs mandated by the state." (*Gov. Code, § 17521.*) The Commission's adjudication of the test claim "governs all subsequent claims based on the same statute." (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1807, 53 Cal.Rptr.2d 521.)
- 5 Additional procedural and background facts regarding the permit and the test claims not necessary to our decision are described in *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 50 Cal.Rptr.3d 619, *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, and *Department of Finance, supra*, 1 Cal.5th 749, 207 Cal.Rptr.3d 44, 378 P.3d 356.
- 6 In *Department of Finance*, the Supreme Court noted that the state agencies and the local governments "d[id] not dispute here that each challenged requirement is a new program or higher level of service." (*Department of Finance, supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The local governments contend that this statement "could be treated as law of the case"; that is, that the Supreme Court implicitly decided that the trash receptacle and inspection requirements are new programs or higher levels of service. Under the law of the case doctrine, " "an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." [Citation.] [Citation.] 'Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in the prior appeal.' " (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127, 218 Cal.Rptr.3d 127, 394 P.3d 1055.) The Supreme Court's statement in *Department of Finance* as to an issue that the parties did not dispute does not constitute "a rule of law necessary to the decision of the case." Although an exception

CHANEY, J.

BENDIX, J.

All Citations

59 Cal.App.5th 546, 273 Cal.Rptr.3d 619, 21 Cal. Daily Op. Serv. 234, 2021 Daily Journal D.A.R. 170

to this rule applies when a question is implicitly decided because it was essential to the appellate court's decision, the general rule and not the exception apply here. We therefore reject the argument that the Supreme Court has decided the issues before us.

- 7 The state agencies also assert that the local governments have the authority to levy charges to pay for the inspections under [section 5471 of the Health and Safety Code](#). Because we hold that the police power under the constitution provides such authority, we do not address this issue.
- 8 We do not express any view as to whether a particular fee a local government could impose would either exceed the reasonable cost of providing the services for which the fee is charged or not bear a fair or reasonable relationship to the payor's burdens or benefits from the inspection.
- 9 It is not clear from our record whether the local governments have authority to install and maintain trash receptacles on property they do not own, including property owned by transit authorities. When counsel for the Regional Board was asked at a hearing before the Commission about the ability of the local governments to fulfill the trash receptacle requirement with respect to transit authority property, counsel suggested that the local governments could work "cooperatively" with transit authorities to implement the requirement.

13 Cal.5th 800
Supreme Court of California.

COAST COMMUNITY COLLEGE
DISTRICT et al.,
Plaintiffs and Appellants,
v.
COMMISSION ON STATE MANDATES,
Defendant and Respondent;
Department of Finance, Real Party in
Interest and Respondent.

S262663
|
August 15, 2022

Synopsis

Background: Community college districts petitioned for writ of mandate challenging decision of Commission on State Mandates that funding entitlement regulations did not impose a state mandate under state constitutional provision requiring the State to reimburse local governments for state-mandated new programs or higher level of service. The Superior Court, Sacramento County, No. 34-2014-80001842CUWMGDS, [Christopher E. Krueger, J.](#), denied petition and entered judgment. Districts appealed. The Court of Appeal, [47 Cal.App.5th 415](#), [261 Cal.Rptr.3d 26](#), reversed in part. Commissioner petitioned for review.

[Holding:] The Supreme Court, [Groban, J.](#), held that funding entitlement regulations did not impose a state mandate under a legal compulsion theory.

Judgment of Court of Appeal reversed and remanded.

[Liu, J.](#), filed concurring opinion.

West Headnotes (16)

[1] **States** ← State expenses and charges and statutory liabilities

Commission on State Mandates is a quasi-judicial body that has the sole and exclusive authority to adjudicate whether a state mandate

exists. [Cal. Gov't Code § 17551](#).

[2] **States** ← State expenses and charges and statutory liabilities

Purpose of the state's constitutional obligation to reimburse a local government whenever the legislature or any state agency mandates a new program or higher level of service on any local government 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. [Cal. Const. art. XIII B, § 6](#).

[3] **Education** ← Powers, duties, and liabilities

The only limitation placed on the authority of a board of trustees of a community college district under the permissive education code is that the board may not act in any manner that is inconsistent with any law. [Cal. Educ. Code § 70902\(a\)\(1\)](#).

[4] **States** ← State expenses and charges and statutory liabilities

A court reviews a decision of Commission on State Mandates to determine whether it is supported by substantial evidence.

[5] **Mandamus** ← Scope and extent in general

Ordinarily, when the scope of review in the trial court on a petitioned for writ of is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same; however, an appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions.

[6] **Trial** ← Construction of writings

Question whether statute or executive order imposes a mandate is a question of law.

[7] **Mandamus**—Scope and extent in general

Question of whether funding entitlement regulations governing community colleges districts imposed a state mandate, for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, was a question of law warranting independent review by the Supreme Court based on the entire record, on appeal from denial of petition for writ of mandate. Cal. Const. art. XIII B, § 6; Cal. Educ. Code § 70901(b)(6); Cal. Code Regs. tit. 5, § 51102.

[8] **States**—State expenses and charges and statutory liabilities

“Legal compulsion,” as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, occurs when a statute or executive action uses mandatory language that requires or commands a local entity to participate in a program or service. Cal. Const. art. XIII B, § 6.

[9] **States**—State expenses and charges and statutory liabilities

“Legal compulsion,” as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, is present when the local entity has a mandatory, legally enforceable duty to obey. Cal. Const. art. XIII B, § 6.

[10] **States**—State expenses and charges and statutory liabilities

The “legal compulsion” standard, as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, is similar to the showing necessary to obtain a traditional writ of mandate. Cal. Const. art. XIII B, § 6.

[11] **Mandamus**—Ministerial acts in general

A petitioner seeking a traditional writ of mandate

must establish that the administrative agency or its officer has a clear, present, and usually ministerial duty to act.

[12] **Mandamus**—Matters of discretion

Mandate will not issue if the duty to act on the part of the administrative agency or its officers is mixed with discretionary power.

[13] **States**—State expenses and charges and statutory liabilities

Generally, a local entity’s voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, even if that decision results in certain mandatory actions. Cal. Const. art. XIII B, § 6.

[14] **States**—State expenses and charges and statutory liabilities

“Practical compulsion,” as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply. Cal. Const. art. XIII B, § 6.

[15] **States**—State expenses and charges and statutory liabilities

Regulations specifying various conditions that community college districts were required to satisfy to avoid the possibility of having state aid reduced or withheld did not legally compel districts to comply, and thus regulations did not impose a state mandate under a legal compulsion theory for purposes of a local government’s constitutional right to reimbursement for a state-mandated new program or higher level of service; fact that the standards set forth in regulations, including matriculation, hiring of faculty, and selecting curriculum, related to districts’ core

functions did not in itself establish that districts had a mandatory legal obligation to adopt those standards, and California Community Colleges Chancellor had discretion to pursue remedial measures for any noncompliance. Cal. Const. art. XIII B, § 6; Cal. Educ. Code § 70901(b)(6); Cal. Code Regs. tit. 5, § 51102.

[16] States → State expenses and charges and statutory liabilities

Proper focus for inquiry into legal compulsion, as a theory of a state mandate on a local entity for purposes of constitutionally reimbursable state-mandated new programs or higher level of service, is upon the nature of claimants' participation in the underlying programs themselves. Cal. Const. art. XIII B, § 6.

****856 ***69** Third Appellate District, C080349, Sacramento County Superior Court, 34-2014-80001842CUWMGDS, [Christopher E. Krueger](#), Judge

Attorneys and Law Firms

Dannis Woliver Kelley, [Christian M. Keiner](#), [William B. Tunick](#), San Francisco, [Juliane S. Rossiter](#), Walnut Creek, [Chelsea Olson Murphy](#), Sacramento, and [Chelsea A. Tibbs](#) for Plaintiffs and Appellants.

Jennifer B. Henning for California State Association of Counties as Amicus Curiae on behalf of Plaintiffs and Appellants.

[Lozano Smith](#), [Sloan R. Simmons](#), [Nicholas J. Clair](#), Sacramento; and [Robert Tuerck](#), Quincy, for California School Boards Association's Education Legal Alliance as Amicus Curiae on behalf of Plaintiffs and Appellants.

[Juliana F. Gmur](#), Fresno, and [Camille Shelton](#), Sacramento, for Defendant and Respondent.

[Kamala D. Harris](#), [Xavier Becerra](#) and Rob Bonta, Attorneys General, [Matthew Rodriguez](#), Acting Attorney General, [Michael J. Mongan](#), State Solicitor General, [Janill L. Richards](#), Principal Deputy State Solicitor General, [Douglas J. Woods](#) and [Thomas S. Patterson](#), Assistant Attorneys General, [Samuel T. Harbourt](#), Deputy State Solicitor General, [Paul Stein](#), [Tamar Pachter](#) and [P. Patty Li](#), Deputy Attorneys General, for Real Party in Interest and Respondent.

Opinion

Opinion of the Court by [Groban, J.](#)

****857 *805** Article XIII B, section 6 of the California Constitution requires the state to reimburse local governments “[w]hensoever the Legislature ***806** or any state agency mandates a new program or higher level of service” (Cal. Const., art. XIII B, § 6, subd. (a).) In this case, several community college districts seek reimbursement for regulations that specify various conditions the districts must satisfy to avoid the possibility of having their state aid withheld. The conditions describe standards governing several core areas of community college administration, including matriculation requirements, hiring procedures, and curriculum selection.

^[1]The districts filed a claim with the Commission on State Mandates, “ ‘ ‘a quasi-judicial body [that] has the sole and exclusive authority to adjudicate whether a state mandate exists’ ’ ” (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, 90 Cal.Rptr.3d 501; see Gov. Code, § 17551), arguing that reimbursement was required under Article XIII B, section 6 because: (1) the regulations imposed a legal duty to satisfy the conditions described therein (“legal compulsion”); or (2) the regulations otherwise *****70** compelled compliance as a practical matter (“practical compulsion”). (See *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203 (*Kern*) [“reimbursable state mandate arises” when entity is compelled to comply; distinguishing legal and practical compulsion]; *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365–1366, 89 Cal.Rptr.3d 93 (*Department of Finance*) [reimbursement not required “if a local government participates ‘voluntarily,’ i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs”].)

The Commission rejected the claims, concluding that the districts had failed to show they were legally compelled to comply with the regulations because there was no provision creating a mandatory duty that they do so; instead, noncompliance merely raised the possibility that some portion of their state funding would be withheld. The Commission further concluded that the districts had failed to establish they were compelled to comply as a practical matter, explaining that no evidence had been submitted demonstrating the districts were unable to function without state funding or that they otherwise lacked any true choice but to comply with the conditions.

In subsequent mandate proceedings, the trial court affirmed the Commission’s findings with respect to both legal and practical compulsion. The Court of Appeal reversed, concluding that the districts were legally compelled to comply with the regulations because those regulations “apply to the underlying core functions of the community colleges, functions compelled by state law.” The court also rejected the Commission’s finding that legal compulsion was inapplicable because noncompliance merely placed the districts at risk of having some portion of their state aid withheld. According to the court, state ***807** laws that required the funding of community colleges and other evidence in the record demonstrated the districts rely on state aid to function, leaving them no choice but to comply with the regulations. Having found the districts had a legal duty to comply with the regulations, the court declined to review the trial court’s conclusion that the districts had failed to show practical compulsion.

We reverse. Contrary to the Court of Appeal’s interpretation, the fact that the standards set forth in the regulations relate to the districts’ core functions (matriculation, hiring of faculty and selecting curriculum, etc.) does not in itself establish that the districts have a mandatory legal obligation to adopt those standards. (See *Kern, supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The regulations make clear that if a district fails to comply, the California Community Colleges Chancellor has discretion to pursue any number of remedial measures that range from taking no action to “withhold[ing] or reduce[ing] all or part of the district’s state aid.” (Cal. Code Regs., tit. 5, § 51102, subd. (b)(5).) Thus, the districts are not legally obligated to adopt the standards described in the regulations, but rather face the risk of potentially severe financial consequences ****858** if they chose not to do so. Because the regulations induce rather than obligate compliance, legal compulsion is inapplicable. (See *Kern, supra*, 30 Cal.4th at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [legal compulsion applicable when a local entity “has a legal obligation” to comply].)

Moreover, while the Court of Appeal appears to have reasoned that the districts have no true choice to comply with the regulations insofar as they depend on state *****71** aid to function, those arguments sound in *practical*, rather than *legal*, compulsion. (See generally *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*) [finding practical compulsion where “[t]he alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards”].) Because the Court of Appeal chose not to address whether the districts established practical compulsion, we will

remand the matter to allow the court to evaluate that issue in the first instance.

I. Background

A. Summary of Applicable Statutes

1. Proposition 4 and implementing legislation

“Article XIII A (adopted by the voters in 1978 as Proposition 13), limits the *taxing* authority of state and local government. Article XIII B ***808** (adopted by the voters in 1979 as Proposition 4) limits the *spending* authority of state and local government.” (*Kern, supra*, 30 Cal.4th at p. 735, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

²¹Section 6 of article XIII B provides: “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 program or increased level of service.” The purpose of 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 articles XIII A and XIII B impose.” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312 (*County of San Diego*)).

In 1984, the Legislature adopted statutory procedures for determining whether a statute or executive action (which includes executive orders and regulations) imposes state-mandated costs on a local agency. (See *Gov. Code*, § 17500 *et seq.*) That legislation provides a two-step procedure. First, a local agency seeking reimbursement must file a “test claim” with the Commission on State Mandates, a quasi-judicial body established to “hear and decide” such matters. (*Id.*, § 17551, subds. (a)–(b).) The test claim process allows the claimant and other interested parties to present written evidence and testimony at a public hearing. (*Id.*, § 17553, subd. (a)(1)); see *Cal. Code Regs.*, tit. 2, § 1183.1, subd. (b) [authorizing multiple claimants “to file a test claim as a joint effort” and providing that “[o]ther similarly situated affected agencies may participate in the process”].) Based on that evidence, the Commission must decide whether the challenged statute or executive order mandates a new program or increased level of service.

In making that determination, the Commission is required to address a series of questions. First, it must decide

whether the legal provision for which subvention is sought compels the local agency to act or merely invites voluntary action. If the provision compels action, the Commission must next decide whether the compelled activity requires the agency to provide “a new program or higher level of service.” (Cal. Const., art. XIII B, § 6.) Finally, if the Commission finds a statute or executive action mandates a new program or higher level of service, it must consider if any of the enumerated exceptions to reimbursement ***72 apply.¹ This case involves **859 only the first of those inquiries: whether the regulations at issue compel community college districts to act or, alternatively, merely invite voluntary action.

*809 If the Commission ultimately determines there is a reimbursable mandate, it must then “determine the amount to be subvented to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order.” (Gov. Code, § 17557, subd. (a); see *County of San Diego, supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

2. Statutes and regulations governing community colleges

¹California community colleges offer two-year degree programs and other forms of instruction. There are currently 73 community college districts that collectively operate 116 community colleges. Each community college district is run by a board of trustees (district board) (see Ed. Code, § 70902, subd. (a)(1)) that is responsible for “establish[ing], maintain[ing], operat[ing], and govern[ing] [the community colleges it oversees] in accordance with law.” (*Ibid.*) Under what is commonly referred to “as the ‘permissive code’ concept” (*Service Employees Internat. Union v. Board of Trustees* (1996) 47 Cal.App.4th 1661, 1666, 55 Cal.Rptr.2d 484), district boards are permitted to “initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with ... any law and that is not in conflict with the purposes for which community college districts are established.” (Ed. Code, § 70902, subd. (a)(1).) Thus, the “only limitation placed on a [district] board’s authority under the permissive code is that the board may not act in any manner” that is inconsistent with any law. (*Service Employees Internat. Union*, at p. 1666, 55 Cal.Rptr.2d 484.)

The Legislature has, however, cabined the authority of district boards in some ways. Education Code section 66010.4, subdivision (a), for example, sets forth the general mission and functions of the community colleges, requiring that they: “offer academic and vocational instruction ... through, but not beyond, the second year of college” (*id.*,

subd. (a)(1)); offer courses to provide “remedial instruction for those in need of it” (*id.*, subd. (a)(2)(A)); “instruct[] in English as a second language” (*ibid.*); and offer “adult noncredit instruction” (*ibid.*).

The Legislature has assigned general oversight authority of the districts to the Board of Governors of the California Community Colleges (the Board of Governors), which enacts regulations and reviews major decisions of community college districts, such as the creation of new colleges. (See Ed. Code, § 70901, subd. (b).) The Board of Governors is headed by the California Community Colleges Chancellor, who is responsible for carrying out and enforcing the Board’s regulations and overseeing the annual apportionment of state funds.

*810 In 1988, the Legislature passed new statutory directives requiring the Board of Governors to establish two categories of regulations. (See Stats. 1988, c. 973, § 8 [adding Ed. Code, § 70901].) First, the Board was required to adopt regulations ***73 establishing “minimum standards as required by law” for various aspects of community college operations. (Ed. Code, § 70901, subd. (b)(1).) Those regulations (hereafter operating standards regulations) set out mandatory “minimum standards” related to (among other things) “graduation requirements,” “the employment of academic and administrative staff,” student discipline, and curriculum. (*Ibid.*; see also Cal. Code Regs., tit. 5, §§ 53000–59606.)

The Legislature also directed the Board of Governors to adopt separate regulations that “[e]stablish minimum conditions entitling districts to receive state aid for support of community colleges” and to adopt procedures to “periodic[ally] review” whether each district has met those minimum conditions. (Ed. Code, § 70901, subd. (b)(6)(A); see Cal. Code Regs., tit. 5, § 51000.) Pursuant to those provisions, the Board passed 19 regulations (see Cal. Code Regs., tit. 5, §§ 51002–51027; **860 hereafter funding entitlement regulations), many of which overlap with (and in some cases directly incorporate) requirements set forth in the operating standards regulations.³

Unlike the operating standards regulations, the districts are not expressly required to comply with the funding entitlement regulations. Instead, the Education Code and its implementing regulations provide that noncompliance authorizes the Chancellor to initiate a process that may result in withholding or reduction of state funding. (See Ed. Code, § 70901, subd. (b)(6); Cal. Code Regs., tit. 5, §§ 51000, 51102.) If the Chancellor determines a district is out of compliance with some or all of the funding entitlement regulations, she must provide the district notice identifying the noncompliance issues and request a response. (See

Code Regs., tit. 5, § 51102, subd. (a).) Once the district responds (or time has lapsed to do so), the Chancellor “shall pursue one or more ... courses of action” that include (among other things) accepting the district’s response, requiring the district to adhere to a remedial plan or “withhold[ing] or reduc[ing] all or part of the *811 district’s state aid.” (Cal. Code Regs., tit. 5, § 51102, subd. (b).) The regulations further require that the remedy the Chancellor selects “shall be related to the extent and gravity of noncompliance.” (*Id.*, subd. (c).)

B. Procedural History

1. The Commission’s resolution of the test claims

In June 2003, the Los Rios, Santa Monica, and West Kern community college districts filed test claims seeking reimbursement for costs associated with 27 sections of the Education Code and approximately 140 related regulations. The test claims included (among other provisions) the operating standards regulations and the funding entitlement regulations. After ***74 nearly a decade of review, the Commission issued a 164-page statement of decision that authorized reimbursement for over 90 of the alleged mandates, many of which related to the operating standards regulations implemented pursuant to Education Code section 70901, subdivision (b)(1). The Commission later adopted parameters and guidelines for the reimbursement of those mandates.

However, the Commission rejected all claims related to the funding entitlement regulations, concluding that the districts had failed to establish those regulations compelled them to take any action. The Commission reasoned that unlike the operating standards regulations, compliance with the funding entitlement regulations was not legally mandated, but instead operated to remove the possibility that the Board of Governors might withhold some portion of the noncomplying district’s state aid. The Commission further explained that the regulations provided the Chancellor and the Board of Governors discretion to choose what “actions to take” in response to a district’s noncompliance, meaning that a district might still retain all its aid even if it chose not to comply. The Commission noted that the districts’ evidence showed only one case in which the Chancellor had ever recommended that the Board of Governors withhold funding from a district, which occurred after the San Mateo Community College had failed to comply with an equal opportunity hiring regulation when choosing its new superintendent. The Board, however, ultimately rejected the Chancellor’s recommendation to withhold funding and chose instead to increase monitoring over the district. The Commission

concluded the case demonstrated that while “there is ... a possible loss of funding, [there is no] ... evidence of the certainty of this loss.”

2. The trial court’s ruling

The districts filed a writ petition seeking reversal of the Commission’s finding that the **861 funding entitlement regulations did not qualify as a mandate. *812 Although the Department of Finance (the Department) joined the Commission in opposing the petition, the Department chose not to seek review of the portion of the Commission’s decision finding that over 90 statutes and regulations (including most of the operating standards regulations) qualified as reimbursable mandates.

The trial court affirmed the Commission’s decision and adopted most of its reasoning. The court concluded that the districts “are not legally compelled to comply with the minimum conditions. Instead, ... [they] only have to comply with the minimum conditions if they want to become entitled to receive state aid.” (Italics omitted.) The court also rejected the districts’ assertion that even if not legally compelled to comply, they were nonetheless practically compelled to do so “because they cannot operate without state funding and thus have no meaningful choice but to comply with the minimum conditions.” The court explained that it could not evaluate that assertion because the districts had “cite[d] no evidence in their briefs about how much community colleges receive from state aid, how much they receive from property taxes, and how much they receive from other funding sources. ... With no evidence on this issue, ... [the districts] fail to prove the key point (i.e., that they cannot operate without state funds).” (Italics omitted.)

The trial court further concluded that even if there were sufficient evidence to support a finding that the districts relied on state funds to operate, the districts had failed to show that noncompliance was reasonably likely to result in the withholding of state funds. The court reasoned that ***75 while the funding entitlement regulations authorized the Chancellor “to withhold state aid if a district fails to comply,” the districts had not proved that “loss of state aid is ... reasonably certain to occur” or that the amounts withheld would necessarily be “severe.” Like the Commission, the trial court cited evidence regarding the disciplinary action the Board of Governors had taken against San Mateo Community College District for failing to comply with funding entitlement regulations related to equal opportunity hiring. The trial court noted that the Board’s meeting minutes showed it had rejected the Chancellor’s recommendation to withhold \$500,000 in state aid because “of the worry that doing so would

negatively impact students.” In the court’s view, these actions showed that it was “unlikely that a district would actually lose any state aid if it failed to comply with the minimum conditions.”

3. *The Court of Appeal’s partial reversal*

The Court of Appeal reversed in part, concluding that the districts had shown they were legally compelled to comply with the funding entitlement regulations because those regulations related to the community college *813 districts’ core functions: “[T]he [funding entitlement regulations] apply to the underlying core functions of the community colleges, functions compelled by state law. ... California community colleges are required to provide specified academic, vocational, and remedial instruction, along with support services. (Ed. Code, § 66010.4.) The [funding entitlement regulations] direct the community college districts to take specific steps in fulfilling those legally-compelled core mission functions, including requirements pertaining to scholarship, degrees, courses, campuses, counseling, and curriculum.”

The court further concluded that while the Commission had found “the [funding entitlement regulations] are not legally compelled because the community colleges are free to decline state aid,” that conclusion was “inconsistent with the statutory scheme and the appellate record.” The court explained that the California Constitution requires “a specific minimum level of state General Fund revenues be guaranteed and applied for the support of community college districts” and further requires that the state provide districts sufficient funding “to permit them to carry out their mission.” Without citing a specific source, the court noted that “in the most recent year for which the appellate record in this case provides information, more than half of California community college funding came from the state General Fund. In that same year, other funding sources, including federal funds, local funds, and student fees, provided significantly less **862 support. Like public school districts in general, community college districts are dependent on state aid.” (Italics omitted.) Because the court found that the districts were legally compelled to comply with the funding entitlement regulations, it declined to address the trial court’s alternative finding that the districts had failed to demonstrate they “faced practical compulsion based on severe and certain penalties.”

The Court of Appeal went on to rule, however, that the districts were not entitled to reimbursement for many of the funding entitlement regulations because the programs or services described within those regulations were duplicative of requirements imposed under the operating standards regulations, which the Commission had

previously found to be reimbursable. In total, the Court of Appeal found that only six of the nineteen funding entitlement regulations involved programs or services that did not overlap with operating ***76 standards regulations or other statutory requirements the Commission had already found to be reimbursable. For those six regulations, the court remanded the matter back to the Commission to evaluate whether they imposed a new program or higher level of service within the meaning of the mandate law.

*814 The Commission and the Department (collectively respondents) filed petitions for review challenging the Court of Appeal’s conclusion that the districts were legally compelled to comply with the funding entitlement regulations.⁴

II. Discussion

A. Standard of Review

^[4] ^[5] ^[6] ^[7]“Courts review a decision of the Commission to determine whether it is supported by substantial evidence. [Citation.] Ordinarily, when the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, the scope of review on appeal is the same. [Citation.] However, the appellate court independently reviews conclusions as to the meaning and effect of constitutional and statutory provisions. [Citation.] The question whether a statute or executive order imposes a mandate is a question of law. [Citation.] Thus, we review the entire record before the Commission ... and independently determine whether it supports the Commission’s conclusion that the conditions here were not ... mandates.” (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

B. Analysis

Respondents argue the Court of Appeal erred in finding the districts were legally compelled to comply with the funding entitlement regulations. They further contend that although the Court of Appeal did not reach the issue, we should additionally find that the districts failed to establish they were practically compelled to comply with those regulations.

*815 *1. Distinction between legal compulsion and practical compulsion*

^[8] ^[9] ^[10] ^[11] ^[12]When evaluating whether a statute or executive action compels compliance for purposes of subvention claims, we have identified two distinct theories

of mandate: legal compulsion and practical compulsion. Legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. ****863** (*Kern, supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203; see *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174, 275 Cal.Rptr. 449 [construing the term “mandates” in *****77** art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”].) Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has “a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power.” (*Los Angeles County Prof. Peace Officers’ Assn. v. County of Los Angeles* (2004) 115 Cal.App.4th 866, 869, 9 Cal.Rptr.3d 615.)

^[13]Thus, as a general matter, a local entity’s voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions. In *Kern, supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, for example, we held that school districts were not entitled to reimbursement for costs associated with a law that imposed new requirements related to the administration of certain voluntary, state-funded educational programs. Under the original statutes governing these voluntary educational programs, “participating school districts [we]re granted state or federal funds to operate the program, and [we]re required to establish ... advisory committees [to] ... administer the program.” (*Id.* at p. 732, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) The new law required participating districts to make those advisory committee meetings open to the public and provide the public notice of the meetings and post meeting agendas.

In rejecting the districts’ reimbursement claim for those new open meeting requirements, we explained that because the “notice and agenda provisions [were merely] mandatory elements of [voluntary] programs” (*Kern, supra*, 30 Cal.4th at p. 731, 134 Cal.Rptr.2d 237, 68 P.3d 1203), the districts were not legally compelled to comply with those provisions. (See *id.* at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [“activities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds — even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice”]; but see ***816** *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887, 16 Cal.Rptr.3d 466, 94 P.3d

589 [declining to adopt a bright-line rule precluding reimbursement “whenever an entity makes an initial discretionary decision that in turn triggers mandated costs”].)

^[14]*Kern* also discussed the concept of “practical compulsion,” a theory of mandate that arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply. (See *Kern, supra*, 30 Cal.4th at pp. 748–752, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) Relying on our decision in *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, the claimants in *Kern* argued that we should construe section’s 6’s mandate provision (see Cal. Const., art. XIII B, § 6) to encompass both legal and practical compulsion. *City of Sacramento* addressed a different provision in article XIII B — section 9 — which lists various categories of appropriations that are excluded from the spending limitations article XIII B otherwise places on state and local governments. One of those exceptions excludes “[a]ppropriations required to comply with mandates of ... the federal government.” (Cal. Const., art. XIII B, § 9, subd. (b).) As summarized in *Kern*, our decision in *City of Sacramento* examined whether section 9’s federal mandate exclusion applied to a *****78** federal law that provided substantial tax incentives for states to extend their unemployment insurance programs to cover public employees. To retain these significant tax advantages, our Legislature passed a statute requiring that government entities (including local entities) include their employees within the state unemployment program. The question we had to decide was whether the federal law constituted ****864** a “federal mandate,” which would mean that local governments could exclude the costs of complying with the new state statute from their constitutional spending limits. (*Kern*, at p. 749, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

Although we found the federal law did not *legally* compel states to extend unemployment insurance coverage to all public employees, we nevertheless concluded that “because the financial consequences to the state and its residents of failing to participate in the federal plan were so onerous and punitive — we characterized the consequences as amounting to ‘certain and severe federal penalties’ including ‘double ... taxation’ and other ‘draconian’ measures [citation] — as a practical matter, for purposes of article XIII B, section 9, the state was mandated to participate in the federal plan to extend unemployment insurance coverage.” (*Kern, supra*, 30 Cal.4th at p. 749, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [summarizing *City of Sacramento*]; see *City of Sacramento, supra*, 50 Cal.3d at p. 76, 266 Cal.Rptr. 139,

785 P.2d 522 [practical compulsion determination “must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal”].)

*817 The claimants in *Kern, supra*, 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, argued that for purposes of consistency we should likewise construe the state mandate provision in article XIII B, section 6 to encompass both legal and practical compulsion. (See *Kern*, at p. 750, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [“claimants argue, the word ‘mandate,’ used in two separate sections of article XIII B, should not be given two different meanings”].) The Department, however, contended we should interpret section 6’s mandate provision more “narrowly ... to include only programs in which local entities are legally compelled to participate.” (*Id.* at p. 751, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

We declined to resolve that issue, explaining that even if we were to assume “that our construction of the term ‘federal mandate’ ... applies equally in the context of article XIII B, section 6” (*Kern, supra*, 30 Cal.4th at p. 751, 134 Cal.Rptr.2d 237, 68 P.3d 1203), the claimants had failed to identify any “‘certain and severe ... penalties’” or other “‘draconian’ consequences” that “reasonably could constitute ... a ‘de facto’ reimbursable mandate.” (*Id.* at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) Rather, the record demonstrated that the new laws merely required each school district to decide whether to continue participating in the voluntary school programs, “even though the school district also must incur program-related costs associated with the notice and agenda requirements ... Presumably, a school district will continue to participate only if it determines that ..., on balance, the funded program, even with strings attached, is deemed beneficial.” (*Id.* at p. 753, 134 Cal.Rptr.2d 237, 68 P.3d 1203, italics omitted.)⁵

***79 2. *The districts have failed to show legal compulsion*

¹⁵We first address the Court of Appeal’s conclusion that the districts were legally compelled to comply with the funding entitlement regulations. Education Code section 70901, subdivision (b)(6)(A) directs the Board of Governors to “[e]stablish minimum conditions entitling districts to receive state aid for support of community colleges” and to periodically review whether districts are in compliance with those conditions. (See ***865 *ante*, 297 Cal.Rptr.3d at p. 73, 514 Cal.Rptr.3d at 859–860, 514 P.3d

at pp. 859–860.) The implementing regulations, in turn, set forth the applicable funding entitlement requirements and describe how the Chancellor is to proceed in the event of noncompliance. The regulations direct that after *818 soliciting a response from a noncompliant district, the Chancellor may pursue a variety of remedies that range from accepting the district’s response to an inquiry to withholding some or all of the district’s state aid. (See Cal. Code Regs., tit. 5, § 51102, subd. (b).)

We are not persuaded that this enforcement scheme legally compels the districts to comply with funding entitlement regulations. As summarized above, Education Code section 70901, subdivision (b) required the Board of Governors to adopt two distinct sets of regulations: the operating standards regulations that the Commission previously found to impose mandates (see Ed. Code, § 70901, subd. (b)(1)) and the funding entitlement regulations at issue in this case (see Ed. Code, § 70901, subd. (b)(6)). (See *ante*, 297 Cal.Rptr.3d at pp. 72–73, 514 P.3d at pp. 859–860.) Unlike the mandatory language governing the operating standards regulations, which directs the Board to “[e]stablish minimum standards *as required by law*” (Ed. Code, § 70901, subd. (b)(1), italics added) and which requires that districts *shall* establish policies consistent with those standards (see Ed. Code, § 70902, subd. (b) [“board of each community college district shall” establish policies and procedures that are consistent with the operating standards]), Education Code section 70901, subdivision (b)(6) and its implementing regulations contain no language “command[ing]” (*Kern, supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203) that the districts comply with the funding entitlement regulations. Instead, those provisions make clear that districts that fail to comply *may* be subject to certain consequences, the most severe of which is withholding of state funds. (See Ed. Code, § 70901, subd. (b)(6)(A) [directing board to establish minimum conditions “entitling districts to receive state aid”]; Cal. Code Regs., tit. 5, § 51102, subd. (b) [describing actions Board may take in response to noncompliance, including withholding of state aid].)

While the districts argue that the threat of such a penalty effectively forces community colleges to comply with the regulations (an issue discussed in more detail below), there is nothing in the statute or regulations that creates a mandatory legal obligation that they do so, which is the ***80 appropriate test for legal compulsion. If a community college district is willing to risk the possibility of losing some or all its state aid, there does not appear to be any mechanism (or at least none the parties have identified) that would allow the Chancellor or any other state entity to compel compliance as a matter of law.⁶

819** The Court of Appeal reached a different conclusion, finding that the districts were legally compelled to comply with the regulations because the funding entitlement regulations “apply to the underlying core functions of the community colleges, functions compelled by state law.” In support, the court cited to [Education Code section 66010.4](#), which describes the “missions and functions” *866** of community colleges, including (among other things) “academic and vocational instruction ... through but not beyond the second year of college.” (Ed. Code, § 66010.4, subd. (a)(1).) In the appellate court’s view, the funding entitlement regulations “direct the community college districts to take specific steps in fulfilling those legally compelled core mission functions, including requirements pertaining to scholarship, degrees, courses, campuses, counseling, and curriculum.”

¹⁶We do not dispute that many of the funding entitlement regulations are “in connection with” or relate to the “core functions” that community colleges are required to perform. We are not persuaded, however, that such a relationship is sufficient to establish legal compulsion. As we have previously explained, “[T]he proper focus under a legal compulsion inquiry is upon the nature of claimants’ participation in the underlying programs themselves.” (*Kern, supra*, 30 Cal.4th at p. 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) Applying that standard here, the proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein, not whether those conditions relate to the core functions of the districts. [Section 70901, subdivision \(b\)\(6\)](#) provides that compliance with the minimum conditions “*entitl[es]* districts to receive state aid” (italics added), while Regulation 51102, subdivision (b) describes the remedial actions the Chancellor may impose in the event of noncompliance, up to and including withholding of state aid. (See [Cal. Code Regs., tit. 5, § 51102, subd. \(b\)\(5\)](#).) Because these provisions do not create an enforceable obligation to comply ****81** with the funding entitlement conditions, but rather describe conditions the districts must satisfy to avoid the possibility of having their state aid reduced or withheld, the enactments are not “mandates” under a legal compulsion theory.

***820** The Court of Appeal also disagreed with the Commission’s conclusion that compliance with the funding entitlement regulations is not “legally compelled” because “community colleges are free to decline state aid.” In rejecting this argument, the court noted that various statutes and constitutional provisions require the state to provide the community college system sufficient funding to carry out its mission. Without citing a specific source,

the court further explained that in the most recent year for which information was available “more than half of California community college funding came from the state General Fund. ... [while] other funding sources ... provided significantly less support. (Italics omitted.) Like public school districts in general, community college districts are dependent on state aid.”

While the Court of Appeal may be correct that some (if not most) community college districts are heavily reliant on state aid — and thus have no true alternative but to act in a manner that secures their funding — those arguments sound in *practical* compulsion, rather than legal compulsion.⁷ (See generally *Kern, supra*, 30 Cal.4th at pp. 731, 751, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [practical compulsion occurs when the local entity has “ ‘no true option or choice’ ”]; *City of Sacramento, supra*, 50 Cal.3d at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522 [finding practical compulsion where the consequences of noncompliance “were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards”].)

The Court of Appeal’s reasoning is consistent with the primary argument the districts have raised throughout these proceedings, which also sounds in practical compulsion. In the trial court, for example, the districts argued that “the most serious error in the [Commission’s] decision is the conclusion that the ‘minimum conditions’ of receiving state aid are not mandates because the Colleges may choose not to receive state funding. That conclusion is erroneous because the Colleges ****867** truly have no meaningful choice [but to comply].” In support, they cited *City of Sacramento, supra*, 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, a case that turned on practical compulsion. (See *ante*, at pp. 297 Cal.Rptr.3d at pp. 77–78, 514 P.3d at pp. 863–864.) The districts’ briefing in the Court of Appeal contains essentially identical language, asserting that because noncompliance with the funding entitlement regulations could result in the “drastic loss” of funding necessary “to provide educational services, ... the [c]olleges have no true choice but to comply.” Those same arguments remain central in the districts’ briefing before this court, where they again contend that “[t]he most serious error in the ... Commission decision is ... the conclusion that the minimum conditions of ***821** receiving State aid are not mandates because the [districts] may somehow choose not to receive state funding. This conclusion is erroneous because the [districts] have no true choice. ... [¶] ... Put simply, the [districts] contend ****82** community colleges cannot function without state aid.”⁸ Like the Court of Appeal, the districts’ focus on the consequences of noncompliance, and the purported absence of any true choice, sounds in practical rather than

legal compulsion. That the financial situation of some (or most) districts may leave them with no reasonable alternative but to comply with the funding entitlement regulations does not transform this case into one involving legal compulsion.

In sum, while many of the directives in the funding entitlement regulations relate to the districts' core educational functions, that is insufficient to show legal compulsion. Rather, to establish legal compulsion, the claimants had to show they had a mandatory duty to comply with the regulations. The districts have pointed to no such provision. Instead, they have asserted that because they rely on state aid to carry out their core functions, they have no true choice but to comply. For the reasons discussed above, we conclude that argument should be evaluated under the lens of practical, rather than legal, compulsion.

3. On remand, the Court of Appeal should consider practical compulsion

The districts also argue that regardless of whether legal compulsion applies in this case, the record makes clear they were compelled to comply with the funding entitlement regulations as a practical matter. (See *Kern, supra*, 30 Cal. 4th at p. 731, 134 Cal.Rptr.2d 237, 68 P.3d 1203 ["we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion"]; *id.* at p. 736, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [leaving open question "whether ... there are some circumstances in which a state mandate may be found in the absence of legal compulsion"]; *id.* at p. 744, 134 Cal.Rptr.2d 237, 68 P.3d 1203; see also *Department of Finance, supra*, 170 Cal.App.4th at pp. 1365–1366, 89 Cal.Rptr.3d 93 ["if a local government participates 'voluntarily,' i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement"].)

The Department, however, contends (as it did in *Kern*) that we should narrowly interpret article XIII B, section 6 to require reimbursement only when a local government has been legally compelled to *822 provide a new program or higher level of service. (See *Kern, supra*, 30 Cal.4th at p. 736, 134 Cal.Rptr.2d 237, 68 P.3d 1203 ["the Department ... asserts that article XIII B, section 6, reflects an intent on the part of the drafters and the electorate to limit reimbursement to costs that are forced upon local governments as a matter of legal compulsion"].) Alternatively, respondents collectively argue that even if practical compulsion is a valid theory of mandate (or is assumed to be so), claimants in this case have failed to

introduce any evidence establishing that noncompliance with the applicable regulations is "reasonably certain to [result in] 'severe,' 'draconian' consequences." (Quoting **868 *Kern*, at pp. 750–751, 134 Cal.Rptr.2d 237, 68 P.3d 1203; see *id.* at p. 751, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [finding it "unnecessary to resolve whether" practical compulsion is a valid theory ***83 of mandate where claimants had failed to demonstrate noncompliance would result in severe penalties].) More specifically, respondents contend the districts have failed to show either that noncompliance is likely to result in withholding of a significant amount of state aid,⁹ or that the risk of such withholding leaves them with no true alternative but to comply.

Because the Court of Appeal found the districts were compelled to comply with the funding entitlement regulations as a matter of legal compulsion, it chose not to address any of the parties' arguments regarding practical compulsion (also referred to as "nonlegal compulsion" [*Kern, supra*, 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203]). Having now rejected the Court of Appeal's conclusion regarding legal compulsion, we find it "appropriate to remand for the [court] to resolve ... in the first instance" whether the districts may be entitled to reimbursement under a theory of nonlegal compulsion. (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1149, 95 Cal.Rptr.2d 701, 998 P.2d 403 ["It is appropriate to remand for the Court of Appeal to resolve ... in the first instance" issues that the court chose "not [to] reach because of its holdings"]; see *People v. Goolsby* (2015) 62 Cal.4th 360, 368, 196 Cal.Rptr.3d 726, 363 P.3d 623 [reversing finding that Pen. Code, § 654 barred retrying defendant for a lesser offense and remanding with directions that appellate court "decide ... in the first instance" the unresolved question of whether retrial was barred under double jeopardy principles]; see *823 *Central Coast Forest Assn. v. Fish & Game Com.* (2017) 2 Cal.5th 594, 606, 214 Cal.Rptr.3d 265, 389 P.3d 840; *In re Manuel G.* (1997) 16 Cal.4th 805, 820, 66 Cal.Rptr.2d 701, 941 P.2d 880.)¹⁰

869 *84 III. Disposition

The Court of Appeal's judgment is reversed and the matter is remanded for further proceedings consistent with this opinion.

We Concur:

CANTIL-SAKAUYE, C. J.

CORRIGAN, J.

KRUGER, J.

JENKINS, J.

GUERRERO, J.

Concurring Opinion by Justice Liu

The Court of Appeal in this case concluded that community college districts are legally compelled to comply with the regulations setting forth the “minimum conditions entitling districts to receive state aid” (Ed. Code, § 70901, subd. (b)(6)(A)) based on its view that the regulations “direct the community college districts to take specific steps in fulfilling th[eir] legally-compelled core mission functions.” I agree with today’s opinion that the Court of Appeal’s reasoning and conclusion are incorrect, and I therefore concur in the judgment of reversal. However, given the way the *824 parties argued this case, I do not think we have enough information to conclude that the minimum conditions are not legally compelled. I would remand for further consideration of this issue in light of the relevant statutory and regulatory provisions.

I.

This case concerns the legal obligations of California’s community college districts. Two sets of potential obligations are at issue: “minimum standards” and “minimum conditions.” (Ed. Code, § 70901, subd. (b)(1), (b)(6).) These two sets of regulations describe a variety of requirements related to community colleges’ operations and academic offerings, and they overlap substantially.

It is uncontested that the community college districts are legally obligated to comply with the minimum *standards*, making costs incurred in compliance with those regulations subject to reimbursement under provisions added to the California Constitution by Proposition 13. (See *Dept. of Finance v. Com. on State Mandates* (2003) 30 Cal.4th 727, 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [costs that are “legally compelled ... constitute reimbursable state mandates”].) The court below determined that the districts are legally compelled to comply with the minimum *conditions* regulations as well. We are asked to review that decision.

The Education Code tells us where to look to understand the legal obligations of community college districts. Section 70900 of the Education Code says that “local districts shall carry out the functions specified ***85 in Section 70902.” (Ed. Code, § 70900.) Section 70902 of the

Education Code (section 70902) then sets forth in detail the obligations of community college districts. Certain provisions of that section specifically instruct districts to comply with at least some of the minimum standards. For instance, subdivision (b) states that “each community college district shall [¶] ... [¶] [e]stablish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards” and shall “[e]mploy and assign all personnel not inconsistent with the minimum standards.” (Ed. Code, § 70902, subd. (b), (b)(3), (b)(4).)

Section 70902 does not specifically mention the minimum conditions. But several provisions of section 70902 appear to create broad legal requirements for community college districts that might include compliance with those regulations. For example, subdivision (a)(2) says districts “shall establish rules and regulations not inconsistent with the regulations of the board of governors,” the state’s supervisory entity that issues both the minimum standards and minimum conditions regulations. (Ed. Code, § 70902, subd. (a)(2); see also § 70901, subd. (b)(1), (6) [requiring board of *825 governors to establish minimum standards and minimum conditions].) Section 70902 also requires districts to initiate and operate their **870 programs in ways that are “not in conflict with or inconsistent with, or preempted by, any law and that [are] not in conflict with the purposes for which community college districts are established.” (Ed. Code, § 70902, subd. (a)(1).) These provisions could be read to require community colleges to comply with some or all of the specific requirements of the minimum conditions regulations.

Because this statutory language is not free of ambiguity, we look to applicable regulations to discern what consequences may flow from noncompliance with the minimum conditions in order to decide whether they are legally compelled. Sections 51100 and 51102 of title 5 of the California Code of Regulations govern the investigation and enforcement of the minimum conditions. When a district is found to be in noncompliance with the minimum conditions, section 51102 describes several penalties that may be imposed, which include withholding or reduction of state funding. (Cal. Code Regs., tit. 5, § 51102, subd. (b).) But section 51100 further instructs that “[t]he enforcement procedures and remedies set forth in this subchapter are in addition to any and all other enforcement mechanisms and remedies provided by law for violation of the provisions of this chapter” (i.e., the minimum conditions). (Cal. Code Regs., tit. 5, § 51100, subd. (d).)

Section 51100 does not say what other enforcement mechanisms and remedies are available for violations of

the minimum conditions. And we have received no briefing or argument about what legal obligations related to the minimum conditions may be imposed by [section 70902](#) or what enforcement mechanisms besides withholding of funds are contemplated by [section 51100](#). Without further information about the meaning of those provisions, I do not see how we can determine whether compliance with the minimum conditions is legally compelled.

II.

Today’s opinion focuses instead on the language of [section 70901 of the Education Code](#), the part of the Code that describes the obligations of the state board of governors. (See *Ed. Code*, § 70900 [“The board of governors shall carry out the functions specified in [Section 70901](#), [and] local districts shall carry out the functions specified ***[86](#) in [Section 70902](#)”].) The court reasons that because [subdivision \(b\)\(6\) of section 70901](#) “and its implementing regulations contain no language ‘command[ing]’ [citation] that the districts comply with the [minimum conditions] regulations,” compliance with the minimum conditions is not compelled by statute. (Maj. opn., *ante*, 297 Cal.Rptr.3d at p. 79, 514 P.3d at p. 865.)

*[826](#) But, as noted, [section 70901](#) does not set forth the legal duties of community college districts; it addresses the duties of the state board of governors. The statute that describes the legal responsibilities of community college districts is [section 70902](#), which today’s opinion does not consider in its assessment of the minimum conditions.

Further, the court explains the procedure under [section 51102](#) of the regulations by which state funding may potentially be withheld from districts for noncompliance with the minimum conditions. It then declares that this is “the most severe” consequence for noncompliance. (Maj. opn., *ante*, 297 Cal.Rptr.3d at p. 79, 514 P.3d at p. 865.) If

that were true, I would agree that the consequences for noncompliance with the minimum conditions are insufficient to impose a legal mandate. But we do not know whether withholding of funds is “the most severe” consequence districts may face. The court does not discuss [section 51100, subdivision \(d\)](#) — the regulation that makes that consequence nonexclusive — nor do we have any information about what other consequences are authorized by the regulations.

The parties have not supplied briefing or argument on the language in [section 70902](#) that may obligate districts to follow the minimum conditions or the provision of [section 51100](#) of the regulations that makes withholding of funds a nonexclusive remedy for noncompliance. They have focused instead on the language of [section 70901](#), as the court does. But we must consider all relevant provisions before reaching a conclusion as to whether compliance with the minimum conditions is legally compelled. Indeed, the fact that neither the parties nor the courts below have ***[871](#) discussed [section 70902](#) or [section 51100](#) is exactly why I would not go as far as the court does today. (Cf. maj. opn., *ante*, 297 Cal.Rptr.3d at pp. 83–84 fn. 10, 514 P.3d at pp. 868–869 fn. 10.) I would hold only that the Court of Appeal’s analysis was incorrect and remand for that court to consider in the first instance any other theories of legal or practical compulsion, including any mandate that may be imposed by [section 70902](#) or [section 51100](#). Without due consideration of those provisions, I would not hold, as today’s opinion does, that community college districts are not legally compelled to comply with the minimum conditions.

I concur only in the judgment of reversal.

All Citations

13 Cal.5th 800, 514 P.3d 854, 297 Cal.Rptr.3d 67, 2022 Daily Journal D.A.R. 8695

Footnotes

- 1 Those exceptions include, among other things: (1) when the state has imposed the new program or service to comply with a federal mandate; (2) when the state has provided the local agency offsetting savings that are commensurate with costs of the new program or service; or (3) when the local agency is authorized to fund the new program or service by imposing fees or assessments. (See *Gov. Code*, § 17556.)
- 2 Except where otherwise noted, all further references to “Regulation” or “Regulations” are to title 5 of the California Code of Regulations.
- 3 Regulation 51002, for example, directs the districts to “adopt regulations consistent with the standards of scholarship contained in articles 2 through 5 (commencing with section 55020) of subchapter 1 of chapter 6” of the Regulations, which refers to the operating standards regulations that govern scholarship. Similarly, Regulation 51004 directs the districts to “adopt regulations consistent with regulations contained in articles 6 and 7 (commencing with section 55060) of subchapter 1 of chapter 6,” which refers to the operating standards regulations that govern the issuance of degrees

and certificates. As discussed in more detail below (see *post*, 297 Cal.Rptr.3d at pp. 75–76, 514 P.3d at pp. 861–862), the Court of Appeal's decision found that numerous other provisions in the funding entitlement regulations overlap with requirements in the operating standards regulations.

- 4 The Commission has also requested review of a separate portion of the Court of Appeal's decision that directs the Commission to make further findings regarding the districts' entitlement to reimbursement for various sections of the Education Code that are unrelated to the regulations discussed above. The Commission asserts it lacks fundamental jurisdiction to address those sections of the Education Code because: (1) the districts' test claims do not expressly reference those statutes; and (2) some of those statutes were the subject of a prior test claim. The Department, which has not joined in this argument, is of the view that while a claimant might be procedurally barred from seeking reimbursement for statutes that were not listed in a test claim or were the subject of a prior test claim, those circumstances do not result in a jurisdictional bar. Although the Commission's arguments regarding this secondary issue fall within the scope of our order granting review, we decline to address them. ([Cal. Rules of Court, rule 8.516\(b\)\(3\)](#) ["The court need not decide every issue the parties raise or the court specifies"].)
- 5 While *Kern*'s general discussion of the distinction between legal and practical compulsion is helpful for evaluating the parties' arguments in this case, the specific nature of the mandate claim at issue in *Kern* is factually somewhat distinct from the districts' claims here. As discussed above, participation in the underlying school programs that triggered the challenged costs in *Kern* was completely voluntary. (*Kern, supra*, 30 Cal.4th at p. 744, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) Thus, nonparticipation in the underlying programs would have left the claimant school districts in the same position they would have been in otherwise, i.e., with no additional costs. By contrast, as discussed in more detail below, the districts here allege that choosing not to comply with the funding entitlement regulations results in unavoidable severe consequences, namely placing their state aid in jeopardy.
- 6 At oral argument, counsel for the districts argued that several of the funding entitlement regulations include the word "shall," which is generally indicative of a mandatory duty. (See [Cal. Code Regs., tit. 5, §§ 51002](#) [district "shall" ... adopt regulations consistent with the standards of scholarship contained in articles 2 through 5 (commencing with section 55020)," italics added]; 51004 [district "shall" ... adopt regulations consistent with regulations contained in articles 6 and 7 (commencing with section 55060)," italics added]; 51006 [district "shall adopt" a policy making courses open to any enrolled students, italics added].) Those regulations, however, must be read in the context of — and in conjunction with — [Education Code section 70901, subdivision \(b\)\(6\)](#) and Regulation 51002, which explain the *consequences* of failing to comply with regulations, i.e., the Chancellor and Board of Governors are given discretionary authority to withhold state aid. (See *ante*, 297 Cal.Rptr.3d at pp. 73, 514 P.3d at pp. 859–860.) Regardless of whether those consequences are sufficient to support a claim of *practical* compulsion (an issue we do not reach here [see *post* at pp. 297 Cal.Rptr.3d at pp. 82–83, 514 P.3d at pp. 867–868]), the risk that funding might be withheld does not create a mandatory legal duty to comply with the regulations, which is the applicable test for legal compulsion. (Cf., *Kern, supra*, 30 Cal.4th at p. 745, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [regulation directing that school districts "shall" establish certain policies did not create a legal duty where other provisions made clear compliance was only necessary if the school districts chose to participate in a voluntary program].)
- 7 The administrative record includes a letter the Chancellor submitted to the Commission in 2008 acknowledging that three (and in some prior years four) community college districts did not receive any general apportionment funding because they derived sufficient revenue from other sources (primarily property tax allocations from their respective counties) to meet their funding needs. This evidence suggests that some districts may rely on state funding more heavily than others.
- 8 The districts' answers to respondents' petitions for review likewise focused on the consequences of noncompliance, arguing that they had not "voluntarily" complied with the funding entitlement regulations, but rather were "required to do so at risk of drastic fiscal loss of funds" and had no "true choice" but to comply given their reliance on state aid.
- 9 As noted above, there appears to be substantial overlap between the directives described in the operating standards regulations (which the Commission has already found to qualify as mandates) and those set forth in the funding entitlement regulations. (See *ante*, 297 Cal.Rptr.3d at pp. 73 fn. 3, 75–76, 514 P.3d at 860 fn. 3, 861–862 .) Thus, while the record before us is not clear on the point, the districts may already be compliant with (and reimbursed for) many or most of the activities described in the funding entitlement regulations. Given that the funding entitlement regulations direct that any remedy the Chancellor chooses to impose must relate to the "extent and gravity of noncompliance" ([Cal. Code Regs., tit. 5, § 51102, subd. \(c\)](#)), the fact that districts may already be compliant with (and compensated for) many of the conditions described in the funding entitlement regulations could be relevant to determining the appropriate remedy, including the size and scope of any withholding.
- 10 The concurrence agrees that the Court of Appeal erred in finding the statutes and regulations the parties have relied on throughout this litigation (namely [Education Code section 70901, subdivision \(b\)\(6\)](#) and Regulation 51102) legally compel

the districts to comply with the funding entitlement regulations. Rather than remand the matter to address only practical compulsion, however, the concurrence would remand with directions that the appellate court also consider whether a different section of the [Education Code, section 70902](#), might be interpreted to legally compel the districts to comply with the challenged regulations. The success or failure of such an argument, the concurrence explains, would appear to turn on whether there may be another “enforcement mechanism” apart from the provisions in Regulation 51102 that could be used to compel the districts to comply with the funding entitlement regulations. (See conc. opn. of Liu, J, *post*, 297 Cal.Rptr.3d at pp. 85–86, 514 P.3d at pp. 869–871.) The concurrence identifies no such alternative mechanism, but hypothesizes that because one might exist, we should provide the parties an opportunity to explore the issue further.

As the concurrence expressly acknowledges, no party has ever presented such a theory at any point during this litigation, which has now been ongoing for almost two decades. (See conc. opn. of Liu, J, *post*, 297 Cal.Rptr.3d at p. 86, 514 P.3d at p. 870.) From the start of the proceedings, the districts’ reimbursement claim has focused on [Education Code section 70901](#) and its implementing regulations. That is not particularly surprising given that [section 70901](#) is the statute that describes (and distinguishes) the operating standards regulations and the funding entitlement regulations. In any event, as a court of review, our role is to evaluate the arguments the parties have presented, not “construct [alternative] theor[ies] that might be] supportive” of their claims. (*People v. Stanley* (1995) 10 Cal.4th 764, 793, 42 Cal.Rptr.2d 543, 897 P.2d 481; see also *In re Harris* (2021) 71 Cal.App.5th 1085, 1100, 287 Cal.Rptr.3d 46 [“it is not our role to make arguments for petitioner or to consider arguments not raised or ... addressed below,” fn. omitted]; cf. *Jibilian v. Franchise Tax Bd.* (2006) 136 Cal.App.4th 862, 866, fn. 3, 39 Cal.Rptr.3d 123 [“it is not our role to construct theories or arguments that would undermine the judgment”].) Accordingly, we decline to direct the Court of Appeal to consider undeveloped legal theories that neither party has advocated for.

85 Cal.App.5th 535

Court of Appeal, Third District, California.

DEPARTMENT OF FINANCE et al.,
Plaintiffs, Cross-defendants and Appellants,
v.
COMMISSION ON STATE MANDATES,
Defendant and Respondent;
County of San Diego et al., Defendants,
Cross-complainants and Appellants.

C092139

Filed October 24, 2022

Synopsis

Background: State petitioned for writ of administrative mandate, asserting that Commission on State Mandates erred in ruling that six of eight conditions State imposed on stormwater discharge permit held by local governments were reimbursable mandates. Local governments filed cross-petition challenging decision of non-reimbursability as to two conditions. The Superior Court, Sacramento County, [Allen Sumner, J.](#), granted State’s petition in part. Local governments appealed. The Third District Court of Appeal, [18 Cal.App.5th 661](#), [226 Cal.Rptr.3d 846](#), reversed and remanded. The Superior Court, Sacramento County, No. 34201080000604CUWMGDS, upheld Commission’s decision in its entirety, finding six permit conditions were reimbursable mandates and two were not, and denied both petitions. State appealed and local governments cross-appealed.

Holdings: The Court of Appeal, [Hull](#), Acting P.J., held that:

[1] doctrine of law of the case did not preclude determination of whether permit conditions were reimbursable state mandates;

[2] permit conditions were new program;

[3] permit conditions were mandated by State;

[4] statute declaring meaning of term “sewer” did not apply retroactively to Commission’s decision;

[5] local governments lacked authority to impose stormwater drainage fees to pay costs of non-development-related permit conditions;

[6] local governments had authority to charge street-sweeping fees; and

[7] local governments had authority to impose valid regulatory fees on developers for costs of complying with development-related conditions.

Affirmed in part and reversed in part.

West headnotes (80)

[1] **States**—State expenses and charges and statutory liabilities

Court of Appeal’s statement, on prior appeal from trial court’s disposition of State’s petition for writ of administrative mandate challenging determination of Commission on State Mandates regarding reimbursability of conditions in stormwater discharge permit, that permit conditions were state mandates was premature dictum, and, thus, doctrine of law of the case did not preclude Court of Appeal, on subsequent appeal from trial court’s denial of petition on remand, from determining whether permit conditions were reimbursable state mandates; only issue determined by trial court and subject to first appeal was whether conditions were federal mandates, and appellate decision that conditions were

not federal mandates did not mean they were automatically reimbursable state mandates. Cal. Const. art. XIII B, § 6.

[2] **States**—Exercise of supreme executive authority
Statutes—Questions of law or fact

Whether a statute or executive order imposes a reimbursable mandate under California’s constitutional mandate provision is a question of law. Cal. Const. art. XIII B, § 6.

[3] **States**—State expenses and charges and statutory liabilities

For purposes of the reimbursable state mandate provision of the California Constitution, a “program” refers to either programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Cal. Const. art. XIII B, § 6.

[4] **States**—State expenses and charges and statutory liabilities

In the California constitutional provision governing reimbursable state mandates, the term “higher level of service” refers to state-mandated increases in the services provided by local agencies in existing programs. Cal. Const. art. XIII B, § 6.

[5] **Environmental Law**—Discharge of pollutants

Water pollution abatement conditions of stormwater drainage permit that State issued to local governments pursuant to National Pollutant Discharge Elimination System (NPDES) required local governments to provide services which they had not provided before, as necessary for permit conditions to constitute new program for purposes of constitutional requirement of subvention for state mandates, even though underlying obligation to abate pollution was unchanged from prior permits; new permit required local governments, which had already been providing stormwater drainage services, to provide new program of water pollution abatement services in new forms. Cal. Const. art. XIII B, § 6; Federal Water Pollution Control Act §§ 402, 502, 33 U.S.C.A. §§ 1342, (D), 1362(5); Cal. Water Code §§ 13376, 13050(c); 40 C.F.R. §§ 122.21, 122.22, 123.25.

[6] **Environmental Law**—Discharge of pollutants

Water pollution abatement services that State required local governments to implement as conditions of stormwater drainage permit were meant to carry out governmental function of providing services to public, as necessary for such conditions to constitute new program within meaning of California’s constitutional subvention requirement for state mandates imposed on local governments, even though conditions arose under federal and state National Pollutant Discharge Elimination System (NPDES) program rather than being imposed directly upon local

governments by law; subvention requirement did not exempt programs arising as conditions of regulatory permits, and permit conditions were not bans or limits on pollution levels, but, rather required performance of specific actions. *Cal. Const. art. XIII B, § 6*; Federal Water Pollution Control Act §§ 402, 502, 33 U.S.C.A. §§ 1342, (D), 1362(5); *Cal. Water Code* §§ 13376, 13050(c); 40 C.F.R. §§ 122.21, 122.22, 123.25.

[7] States—State expenses and charges and statutory liabilities

California’s constitutional subvention requirement for state mandates imposed on local governments applies whenever a new program is imposed directly by law or as a condition of a regulatory permit required by a state agency. *Cal. Const. art. XIII B, § 6*.

[8] States—State expenses and charges and statutory liabilities

Generally, if a local government participates voluntarily, that is, without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement under California’s constitutional subvention provision; however, that a local governmental entity makes an initial discretionary decision that in turn triggers mandated costs does not by itself preclude reimbursement under this provision, as the discretionary decision may have been the result of compulsion as a practical matter. *Cal. Const. art. XIII B, § 6*.

[9] States—State expenses and charges and statutory liabilities

For purposes of the constitutional requirement of subvention regarding state mandates, being compelled, as a practical matter, to participate in a state program with a rule requiring increased costs may arise, among other instances, when a local governmental entity or its constituents face certain and severe penalties or consequences for not participating in or complying with an optional state program. *Cal. Const. art. XIII B, § 6*.

[10] Environmental Law—Discharge of pollutants

As a practical matter, local governments had no realistic alternative to applying for National Pollutant Discharge Elimination System (NPDES) permits for their stormwater drainage activities and comply with State-imposed permit conditions requiring permittees to implement new water pollution abatement systems, and, thus, local governments’ voluntary decision to provide stormwater drainage services did not preclude finding that water pollution abatement conditions were State mandates triggering constitutional subvention requirement; city drainage, which served interest of public health and welfare, was important purpose for which police power could be exercised, and as a matter of practical reality, urbanized cities and counties could not simply cease providing stormwater drainage system. *Cal. Const. art. XIII B, § 6*; Federal Water Pollution Control Act § 402, 33 U.S.C.A. § 1342(p)(2)(C),

(D).

6.

[11] Environmental Law → Discharge of pollutants

Need for both public and private parties that discharged pollution from point sources into waters to obtain National Pollutant Discharge Elimination System (NPDES) permit to do so was irrelevant to issue of whether State’s requirement that local governments provide new water pollution abatement services as conditions of stormwater discharge permits triggered constitutional requirement of reimbursement for state mandates on local governments; what was relevant was that local governments were compelled by state law, including Water Code provisions implementing federal NPDES program, to obtain permit and comply with its conditions. [Cal. Const. art. XIII B, § 6](#); Federal Water Pollution Control Act §§ 402, 502, 33 U.S.C.A. §§ 1342, (D), 1362(5); [Cal. Water Code §§ 13376, 13050\(c\)](#); 40 C.F.R. §§ 122.21, 122.22, 123.25.

[12] States → State expenses and charges and statutory liabilities

To determine whether a program imposed on a local government by a permit is new, for purposes of determining whether the California Constitution requires subvention of the local government’s expenses in complying with new state mandates, a court compares the legal requirements imposed by the new permit with those in effect before the new permit became effective, even if the conditions were designed to satisfy the same standard of performance. [Cal. Const. art. XIII B, §](#)

[13] States → State expenses and charges and statutory liabilities

The California Constitution’s subvention for costs incurred by a local government when the state requires it to provide a new program or increased level of service unless the local government has authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service, excludes expenses that are recoverable from sources other than taxes. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov’t Code § 17556\(d\)](#).

[14] States → State expenses and charges and statutory liabilities

The constitutional provision governing subvention when the state requires a local government to provide a new program was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill-equipped to handle the task; specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. [Cal. Const. art. XIII B, § 6](#).

[15] States → State expenses and charges and statutory liabilities

Although the language of the California constitutional subvention provision broadly declares that the “state shall provide a subvention of funds to

reimburse...local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context, this provision requires subvention only when the costs in question can be recovered solely from tax revenues. *Cal. Const. art. XIII B, § 6*; *Cal. Gov’t Code § 17556(d)*.

[16] Municipal Corporations—Power and Duty to Tax in General

Local governments have authority pursuant to their constitutional police powers to levy regulatory and development fees. *Cal. Const. art. 11, § 7*.

[17] Environmental Law—Power to regulate

Prevention of water pollution is a legitimate governmental objective, in furtherance of which a local government’s constitutional police power may be exercised. *Cal. Const. art. 11, § 7*.

[18] Statutes—Plain language; plain, ordinary, common, or literal meaning
Statutes—Relation to plain, literal, or clear meaning; ambiguity

If the language of a statute is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.

[19] Statutes—Purpose and intent; determination thereof

Statutes—Plain, literal, or clear meaning; ambiguity

If statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.

[20] Statutes—Construction based on multiple factors

Courts consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.

[21] Statutes—Construction and operation of initiated statutes

Courts apply the principles of statutory interpretation to the interpretation of voter initiatives, except that they do so to determine the voters’ intent.

[22] Statutes—Construction and operation of initiated statutes

When interpreting a voter initiative, the court turns first to the initiative’s language, giving the words their ordinary meaning as understood by the average voter.

[23] Statutes—Construction and operation of initiated statutes

Absent ambiguity, courts presume that the voters intend the meaning apparent on the face of an initiative measure.

[24] Statutes—Construction and operation of initiated statutes

A court may not add to a statute or voter initiative or rewrite it to conform to an assumed intent that is not apparent in its language.

[25] Statutes—Construction and operation of initiated statutes

Where there is ambiguity in the language of a voter initiative, ballot summaries and arguments may be considered when determining the voters' intent and understanding of the ballot measure.

[26] Statutes—Construction and operation of initiated statutes

Ambiguities in voter initiatives may be resolved by referring to the contemporaneous construction of the Legislature.

[27] Statutes—Dictionaries

Courts may look to dictionary definitions to determine the usual and ordinary meaning of a statutory term.

1 Case that cites this headnote

[28] Statutes—Dictionaries

Courts do not start and end statutory interpretation with dictionary definitions.

1 Case that cites this headnote

[29] Statutes—Literal, precise, or strict meaning; letter of the law

Statutes—Construing together; harmony

The “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.

[30] Statutes—Context

Statutes—Subject or purpose

The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.

[31] Statutes—Literal, precise, or strict meaning; letter of the law

Literal construction of a statute should not prevail if it is contrary to the legislative intent apparent in the statute; the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

[32] States—State expenses and charges and statutory liabilities

At time of subvention decision by Commission on State Mandates, term “sewer,” in initiative-adopted constitutional article generally requiring voter approval before local government could impose assessments and property-

related fees but exempting fees for sewer, water, and refuse collection, referred only to sanitary sewers, not stormwater drainage systems, for purposes of determining whether local governments had authority to recover costs of complying with State-mandated conditions on stormwater drainage permit; constitutional article at issue was to be construed to limit local government revenue and enhance taxpayer consent, and article used “sewers” distinctly from “drainage systems,” which legislation implementing initiative defined so as to include stormwater drainage. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, §§ 5, 6; Cal. Gov’t Code § 53750(d).

[33] Constitutional Law → Giving effect to every word
Statutes → Statute as a Whole; Relation of Parts to Whole and to One Another

If possible, courts construe statutes and constitutional provisions to give meaning to every word, phrase, sentence, and part of an act.

[34] Statutes → Construction based on multiple factors

When the Legislature or voters use different words in the same sentence of a statute or ballot initiative, courts assume they intended the words to have different meanings; were it not so, the use of the terms to convey the same meaning would render them superfluous, an interpretation courts are to avoid.

[35] Statutes → Express mention and implied exclusion; *expressio unius est exclusio alterius*

Under the maxim “*expressio unius est exclusio alterius*,” when language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful, and that the Legislature intended a different meaning.

[36] States → State expenses and charges and statutory liabilities

Decision of Commission on State Mandates requiring State to reimburse local governments for costs of complying with six water pollution abatement conditions of stormwater discharge permits but finding that constitutional subvention provision did not apply to two other conditions was not final for purpose of determining whether statute clarifying and defining “sewer,” for purposes of voter-approval exception to subvention requirement, applied retroactively to decision at issue; Commission’s decision was still under judicial review and subject to direct attack. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, §§ 5, 6; Cal. Gov’t Code § 53751.

[37] Administrative Law and Procedure → Conclusiveness

To be final so as to be binding on the parties and immune from retroactive or clarifying legislation, as opposed to being final in the sense of administrative finality, an administrative decision must

be free from direct attack by a petition for writ of administrative mandate either because a judgment resolving such a petition has become final and conclusive or because a petition was not timely filed.

[38] Statutes—Language and Intent; Express Provisions

Statutes do not operate retrospectively unless the Legislature plainly intended them to do so.

[39] Constitutional Law—Retrospective laws and decisions; change in law
Statutes—Language and Intent; Express Provisions

When the Legislature clearly intends a statute to operate retrospectively, courts are obliged to carry out that intent unless due process considerations prevent them. U.S. Const. Amend. 14.

[40] Statutes—Declaratory, clarifying, and interpretive statutes

A statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment.

[41] Statutes—Presumptions

Courts assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law.

[42] Statutes—Presumptions

The circumstances surrounding a statutory amendment can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning; such a legislative act has no retrospective effect because the true meaning of the statute remains the same.

[43] Statutes—Application to pending actions and proceedings

A statute that merely clarifies, rather than changes, existing law is properly applied to transactions predating its enactment; however, a statute might not apply retroactively when it substantially changes the legal consequences of past actions, or upsets expectations based in prior law.

[44] Constitutional Law—Interpretation of statutes

The interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts. Cal. Const. art. 6, § 1.

[45] Constitutional Law—Overturning judgment

When the California Supreme Court finally and definitively interprets a statute, the Legislature does not have the power to then state that a later amendment merely declared existing law.

[46] Statutes → Legislative Construction

If the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration regarding the statute's meaning, but even then, a legislative declaration of an existing statute's meaning is but a factor for a court to consider and is neither binding nor conclusive in construing the statute.

[47] Statutes → Legislative Construction
Statutes → Clarifying statutes

A legislative declaration that a statutory amendment merely clarified existing law cannot be given an obviously absurd effect, and the court cannot accept the legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms; material changes in language, however, may simply indicate an effort to clarify the statute's true meaning.

[48] Statutes → Clarifying statutes

A statutory amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute; if the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original

act, a formal change, rebutting the presumption of substantial change.

[49] Statutes → Clarifying statutes

Courts look to the surrounding circumstances as well as the Legislature's intent when determining whether a statute changed or merely clarified the law.

[50] States → State expenses and charges and statutory liabilities

Statute declaring that term "sewer," as used in constitutional article generally subjecting property-related fees imposed by local governments to two-step approval process, included stormwater drainage systems changed the law, for purposes of determining whether statute applied retroactively to constitutional subventions for local governments' costs of complying with conditions of storm drainage permits as mandated by State; legislature adopted statute to abrogate prior Court of Appeal decision that had excluded storm drainage systems from definition of "sewer," and legislature did so 15 years after decision's issuance rather than soon after controversy arose concerning term's interpretation. [Cal. Const. art. XIII B, § 6](#); [Cal. Const. art. XIII D, §§ 5, 6](#); [Cal. Gov't Code § 53751](#).

[51] Statutes → Nature and definition of retroactive statute

A new law operates retroactively when it changes the legal consequences of past conduct by imposing new or

different liabilities based upon such conduct.

[52] Statutes — Language and Intent; Express Provisions

Unless there is an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature must have intended a retroactive application.

[53] Constitutional Law — Policy

A statute’s retroactivity is, in the first instance, a policy determination for the Legislature and one to which courts defer absent some constitutional objection to retroactivity.

[54] Statutes — Language and Intent; Express Provisions

A statute that is ambiguous with respect to retroactive application is construed to be unambiguously prospective.

[55] States — State expenses and charges and statutory liabilities

Legislative intent was unclear as to whether statute defining term “sewer” to include drainage systems for purposes of constitutional subvention of costs incurred by local governments in response to state mandates should apply retroactively, and, thus, statute would not apply retroactively to Commission on State Mandates decision, which had held that costs local governments incurred in fulfilling pollution-

abatement conditions of stormwater drainage permit were subject to subvention; Legislature did not expressly state intent for retroactive application, and Legislature’s statement that statute “reaffirmed and reiterated” that “sewer,” for subvention purposes, had definition provided by Public Utilities Code was incorrect, as Legislature had never indicated such meaning before. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, §§ 5, 6; Cal. Gov’t Code § 53751; Cal. Pub. Util. Code § 230.5.

[56] Statutes — Language and Intent; Express Provisions

Where the Legislature’s statement that, in new legislation, the Legislature reaffirmed and reiterated a prior position is erroneous, especially when the new legislation changed the law, the statement is insufficient to establish a very clear expression that the new legislation should have retroactive effect.

[57] States — State expenses and charges and statutory liabilities

Legislation that provided process whereby a party could request reconsideration of a prior decision by Commission on State Mandates based on subsequent change of law did not indicate that statute defining term “sewer” for subvention purposes to include stormwater drainage systems could apply retroactively to date of Commission decision holding that costs local governments incurred in satisfying pollution-abatement conditions of stormwater drainage permit were subject

to subvention; State had not sought reconsideration of Commission’s decision, and even if it had, Commission could not revise subvention requirements starting earlier than fiscal year prior to year in which State had sought reconsideration, as necessary to affect years-prior decision on stormwater drainage permit conditions. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, §§ 5, 6; Cal. Gov’t Code §§ 17514, 17556(b), 17570, 53751.

[58] States → State expenses and charges and statutory liabilities

Local governments lacked authority to impose stormwater drainage fees to pay costs of complying with pollution-abatement conditions of stormwater drainage permit, and, thus, exception, in constitutional provision generally requiring subvention of costs of compliance with new programs mandated by State, for costs that local governments had authority to recover themselves did not apply to permit conditions, as might have prevented subvention; local governments could not levy property-related fees for stormwater drainage services without voter approval, as served purpose of subvention, namely, to preclude State from shifting financial responsibility for carrying out government functions to local agencies that lacked authority to assume increased costs on their own. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, § 6.

[59] Municipal Corporations → Cleaning streets
States → State expenses and charges and statutory liabilities

Street-sweeping condition that State entities imposed on local governments as condition of stormwater drainage permits constituted refuse collection, and, thus, under constitutional exemption of fees for water, sewer, and refuse collection services from general requirement of voter approval for property-related fees, local governments had authority to charge such fees to recoup costs of street sweeping without voter approval, such that costs were not subject to subvention under constitutional provision applying to new programs mandated by State; condition expressly required local governments to collect trash and debris, which constituted “refuse,” and Public Resources Code authorized local governments to charge fee for refuse collection services. Cal. Const. art. XIII B, § 6; Cal. Const. art. XIII D, § 6; Cal. Gov’t Code § 17556(d); Cal. Pub. Res. Code § 40059.

[60] States → State expenses and charges and statutory liabilities

The State’s purpose for imposing a mandate does not determine whether the mandate is a new program for purposes of the constitutional requirement of subvention of local government’s costs arising under new, State-mandated programs. Cal. Const. art. XIII B, § 6.

[61] States → State expenses and charges and statutory liabilities

Typically, the party claiming the applicability of an exception to subvention under the California Constitution bears the burden of

demonstrating that it applies. [Cal. Const. art. XIII B, § 6.](#)

[62] States—State expenses and charges and statutory liabilities

On State’s petition for writ of administrative mandate challenging decision by Commission on State Mandates that found street-sweeping condition of stormwater discharge permits, as imposed by State, was subject to subvention because local governments, as permittees, lacked authority to levy fees to pay for street sweeping, State bore burden of establishing that local governments had fee authority, but such burden did not require State to prove local governments were able, as a matter of law and fact, to promulgate fee that satisfied substantive requirements of constitutional article setting forth process and limits for local property-related fees. [Cal. Const. art. XIII B, § 6](#); [Cal. Const. art. XIII D](#); [Cal. Gov’t Code § 17556\(d\)](#).

[63] States—State expenses and charges and statutory liabilities

The issue of whether local governments have the authority, that is, the right or power, to levy fees sufficient to cover the costs of a state-mandated program, for purposes of the constitutional subvention requirement, is an issue of law, not a question of fact. [Cal. Const. art. XIII B, § 6.](#)

[64] States—State expenses and charges and statutory liabilities

Unless it can be shown on undisputed facts in the record or as a matter of law that a fee cannot satisfy the substantive requirements of the constitutional article limiting local authority to impose property-related fees, the establishment by the State of a local agency’s power or authority to levy a fee without voter approval or without being subject to other limitations establishes that a local government has sufficient fee authority for purposes of a subvention proceeding before the Commission on State Mandates. [Cal. Const. art. XIII B, § 6](#); [Cal. Gov’t Code § 17556\(d\)](#).

[65] States—State expenses and charges and statutory liabilities

Constitutional requirement of voter approval for property-related assessments and fees did not apply to any fees local governments would levy to recover costs of developing and implementing hydromodification management plan (HMP) and low impact development (LID) requirements for priority development projects, which were conditions of stormwater discharge permits State granted to local governments, for purposes of determining whether local governments’ authority to implement fees precluded subvention of HMP and LID plan costs; constitutional provision containing voter approval requirement did not apply to fees imposed on real property development or on property owners for their voluntary decision to apply for government benefit, namely, approval of new real property development application. [Cal. Const. art. XIII B, § 6](#); [Cal. Const. art. XIII D, §§ 1, 6.](#)

[66] Municipal Corporations → Benefits to Property

Constitutional article restricting imposition of property-related fees does not apply to fees imposed on property owners for their voluntary decision to apply for a government benefit. *Cal. Const. art. XIII D, § 1 et seq.*

[67] States → State expenses and charges and statutory liabilities

Voter-adopted ballot initiative which amended constitution to define local tax subject to voter approval as “any levy, charge, or exaction of any kind imposed by a local government” except for certain charges and fees was not retroactive, and, thus, constitutional amendment’s definitions of “tax” and “fee” did not apply to subvention decision of Commission on State Mandates which was rendered before voters approved such amendment. *Cal. Const. art. XIII C, §§ 1(e), 2.*

[68] Municipal Corporations → Submission to voters, and levy, assessment, and collection

A levy qualifies as a “regulatory fee,” for purposes of the constitutional exemption of certain regulatory fees from the general requirement of voter approval of local taxes related to property, if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the feepayers’ activities or operations; if

those conditions are not met, the levy is a “tax.” *Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 1.*

[69] Municipal Corporations → Submission to voters, and levy, assessment, and collection

Whether a levy constitutes a fee or a tax, for purposes of the general constitutional requirement of voter approval for local taxes related to property, is question of law determined upon independent review of record. *Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 1.*

[70] States → State expenses and charges and statutory liabilities

Local governments failed to establish that, as a matter of law, they would be unable to impose levy in amount that would not exceed reasonable costs of providing service for which levy would be charged, namely, costs of implementing certain water pollution mitigation measures as conditions of approving priority development projects, which State required local governments to implement as condition of stormwater development permits, and, thus, “amount of levy” requirement did not weigh in favor of finding that levy would be tax subject to constitutional requirement of voter approval rather than development or regulatory fee exempt from voter approval; mathematical precision was unnecessary in setting fee, and nothing in record indicated fees could not bear reasonable relationship to costs. *Cal. Const. art. XIII C, § 2; Cal. Const. art.*

XIII D, § 1.

[71] **States**—State expenses and charges and statutory liabilities

Local governments failed to establish that, as a matter of law, they would be unable to impose levy on developers that would bear reasonable relationship to burdens created by future priority development, as factor in analysis of whether any levy imposed by local governments to recoup costs they incurred in complying with State mandate of including certain water pollution mitigation measures as conditions of approval of priority development projects would be tax subject to constitutional voter approval requirement or would be development or regulatory fee exempt from such requirement, where local governments would not levy fees to generate general revenue. Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 1.

[72] **Municipal Corporations**—Submission to voters, and levy, assessment, and collection

A regulatory fee does not become a tax, for purposes of the constitutional requirement of voter approval of property-related taxes, simply because the fee may be disproportionate to the service rendered to individual payors. Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 1.

[73] **Municipal Corporations**—Submission to voters, and levy, assessment, and collection

The question of proportionality of property-related fees, for purposes of determining whether they are in actuality taxes subject to the constitutional requirement of voter approval, is not measured on an individual basis; rather, it is measured collectively, considering all rate payors. Cal. Const. art. XIII C, § 2; Cal. Const. art. XIII D, § 1.

[74] **Municipal Corporations**—Power and Duty to Tax in General

Permissible regulatory fees, as opposed to taxes, must be related to the overall cost of the governmental regulation; they need not be finely calibrated to the precise benefit each individual fee payor might derive or the precise burden each payor may create.

[75] **Municipal Corporations**—Power and Duty to Tax in General

What a regulatory fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection; an excessive fee that is used to generate general revenue becomes a tax.

[76] **Municipal Corporations**—Power and Duty to Tax in General

The substantive test for whether a purported fee is sufficiently proportionate to constitute a valid regulatory fee rather than a tax is a flexible assessment of proportionality within a broad range of reasonableness in setting fees; this flexibility is particularly appropriate where an

obvious or accepted method such as an emissions-based fee is impractical.

[77] Municipal Corporations—Power and Duty to Tax in General

Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost; in those cases, even a flat-fee system may be a reasonable means of allocating costs, such that the fees would not be so disproportionate to the costs as to become taxes.

[78] Municipal Corporations—Public improvements

Any fees that local governments might levy against certain developers to recover costs of creating and implementing hydromodification management plan (HMP) and low impact development (LID) requirements for priority development projects were imposed for specific government service provided directly to developers, as payors, but not provided to those not charged, as necessary for fees to fall into “specific government service” exception to constitutional definition of “tax”; service provided directly and solely to developers of priority development projects, who were only parties that would be charged fees, was preparation, implementation, and approval of HMP and LID water pollution mitigations applicable only to their projects. *Cal. Const. art. XIII C, § 1.*

[79] States—State expenses and charges and statutory liabilities

Fact that whether local governments would actually impose and recover any fees from developers of priority development projects to recoup costs of implementing certain State-mandated water pollution abatement requirements for such projects, given that fees would only be imposed as part of development approval process, was irrelevant to issue of whether local governments had authority to levy such fees, such that subvention of local governments’ costs of implementing water pollution abatement requirements would be unwarranted; issue of authority to levy fee did not turn on whether local governments actually imposed fee. *Cal. Const. art. XIII D, § 6; Cal. Gov’t Code § 17556(d).*

[80] States—State expenses and charges and statutory liabilities

The issue of whether a local agency has the authority to charge a fee for a state-mandated program or increased level of service, such that the charge cannot be recovered by subvention as a state-mandated cost, turns on the local agency’s authority to levy a fee, not on whether the agency actually imposed the fee. *Cal. Const. art. XIII D, § 6; Cal. Gov’t Code § 17556(d).*

****573** (Super. Ct. No. 34201080000604CUWMGDS)

Attorneys and law firms

Ryan R. Davis, Office of the State Attorney General, 1300 I. Street, Suite 125, P.O. Box 944255, Sacramento, CA 94425, for Plaintiff, Cross-defendant and Appellant.

[Camille S. Shelton](#), Commission on State Mandates, Chief Legal Counsel, 980 9th Street, Suite 300, Sacramento, CA 95814-2719, for Defendant and Respondent.

Christina Rea Snider, Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2437, for Defendant, Cross-complainant and Appellant.

[Shawn David Hagerty](#), Best Best & Krieger, LLP, 655 West Broadway, 15th Floor, San Diego, CA 92101-3301, [Helen Holmes Peak](#), Lounsbery, Ferguson, Altona & Peak LLP, 960 Canterbury Place, Suite 300, Escondido, CA 92025-3836, for Defendant, Cross-complainant and Appellant.

[Frederick Michael Ortlieb](#), San Diego City Attorney Office, 1200 Third Avenue, Suite 1620, San Diego, CA 92101, for Defendant, Cross-complainant and Appellant.

Opinion

[HULL](#), Acting P. J.

***549 **574** The California Constitution requires the state to provide a subvention of funds to compensate local governments for the cost of a new program or higher level of service mandated by the state. (Cal. Const., art. XIII B, § 6 (Section 6).) Subvention is not available if the local governments have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or higher level of service. (Gov. Code, § 17556, subd. (d) (section 17556 (d)).) Defendant and respondent Commission on State Mandates (the Commission) adjudicates claims for subvention. (Gov. Code, §§ 17525, 17551.)

This appeal concerns whether Section 6 requires the state to reimburse the defendant local governments (collectively permittees or copermitees) for costs they incurred to satisfy conditions which the state imposed on their

stormwater discharge permit. The Commission determined that six of the eight permit conditions challenged in this action were reimbursable state mandates. They required permittees to provide a new program. Permittees also did not have sufficient legal authority to levy a fee for those conditions because doing so required preapproval by the voters.

The Commission also determined that the other two conditions requiring the development and implementation of environmental mitigation plans for certain new development were not reimbursable state mandates. Permittees had authority to levy a fee for those conditions.

On petitions for writ of administrative mandate, the trial court in its most recent ruling in this action upheld the Commission's decision in its entirety and denied the petitions.

Plaintiffs, cross-defendants and appellants State Department of Finance, the State Water Resources Board, and the Regional Water Quality Board, San Diego Region (collectively the State) appeal. They contend the six permit conditions found to be reimbursable state mandates are not mandates because the permit does not require permittees to provide a new program and permittees have authority to levy fees for those conditions without obtaining voter approval.

Defendant, cross-complainant, and appellant permittees cross appeal. They contend the other two conditions found not to be reimbursable state mandates are reimbursable because permittees do not have authority to levy fees for ***550** those conditions. Specifically, they cannot develop fees that would meet all constitutional requirements for an enforceable fee.¹

The Commission has filed a respondent's brief. As part of its brief, it claims it erred in concluding that part of one of the challenged conditions,

which mandates street sweeping, was a reimbursable mandate. The Commission now agrees with the State that permittees have authority to levy a fee to recover the cost of complying with that condition and it is not reimbursable under Section 6.

Except to hold that the street sweeping condition is not a reimbursable mandate, we affirm the judgment.

Facts and proceedings

For a fuller discussion of the stormwater discharge permitting system and the constitutional ****575** mandate subvention system, please see the discussion in *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, 668-675, 226 Cal.Rptr.3d 846 (*San Diego Mandates I*). For our purposes, it is sufficient to state that the federal Clean Water Act (33 U.S.C. § 1251 et seq.) prohibits pollutant discharges into the nation's waters unless they comply with a permit, established effluent limitations, or standards of performance. The Clean Water Act created the National Pollutant Discharge Elimination System (NPDES) to permit water pollutant discharges that comply with all statutory and administrative requirements. (*San Diego Mandates I*, at pp. 668-669, 226 Cal.Rptr.3d 846.)

Pursuant to federal approval granted under the Clean Water Act, California under the Porter-Cologne Water Quality Control Act (*Wat. Code*, § 13000 et seq.) operates the NPDES permitting system and regulates discharges within the state under state and federal law. (*San Diego Mandates I, supra*, 18 Cal.App.5th at pp. 669-670, 226 Cal.Rptr.3d 846.)

The Clean Water Act requires an NPDES permit for any discharge from a municipal separate storm sewer system (MS4) serving a population of 100,000 or more. (33 U.S.C. § 1342 (p)(2)(C),

(D).) “ ‘[A] permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit non-stormwater discharges into the storm sewers, and must “require controls to reduce the discharge of pollutants to the maximum extent practicable.” (33 U.S.C. § 1342 (p)(3)(B), italics [omitted].)’ ” (*San Diego Mandates I, supra*, 18 Cal.App.5th at p. 670, 226 Cal.Rptr.3d 846.)

***551** In 2007, the Regional Water Quality Control Board, San Diego Region (San Diego Regional Board), issued an NPDES permit to permittees for the operation of their MS4. (*San Diego Mandates I, supra*, 18 Cal.App.5th at p. 670, 226 Cal.Rptr.3d 846.) “The permit was actually a renewal of a nation pollutant discharge elimination system (NPDES) permit first issued in 1990 and renewed in 2001. The San Diego Regional Board stated the new permit ‘specifies requirements necessary for the Co-permittees to reduce the discharge of pollutants in urban runoff to the maximum extent practicable (MEP).’ The San Diego Regional Board found that although the permittees had generally been implementing the management programs required in the 2001 permit, ‘urban runoff discharges continue to cause or contribute to violations of water quality standards. This [permit] contains new or modified requirements that are necessary to improve Co-permittees’ efforts to reduce the discharge of pollutants in urban runoff to the MEP and achieve water quality standards.’

“The permit requires the permittees to implement various programs to manage their urban runoff that were not required in the 2001 permit. It requires the permittees to implement programs in their own jurisdictions. It requires the permittees in each watershed to collaborate to implement programs to manage runoff from that watershed, and it requires all of the permittees in the region to collaborate to implement programs to manage regional runoff. The permit also requires the permittees to assess the effectiveness of their

programs and collaborate in their efforts.

“The specific permit requirements involved in this case require the permittees to do the following:

“(1) As part of their jurisdictional management programs:

“(a) Sweep streets at certain times, depending on the amount of debris they generate, and report the number of curb miles swept and tons of material collected;

****576** “(b) Inspect, maintain, and clean catch basins, storm drain inlets, and other stormwater conveyances at specified times and report on those activities;

“(c) Collaboratively develop and individually implement a hydromodification management plan to manage increases in runoff discharge rates and durations;

“(d) Collectively update the best management practices requirements listed in their local standard urban stormwater mitigation plans (SUSMP’s) and add low impact development best management practices for new real property development and redevelopment;

***552** “(e) Individually implement an education program using all media to inform target communities about [MS4s] and impacts of urban runoff, and to change the communities’ behavior and reduce pollutant releases to MS4s;

“(2) As part of their watershed management programs, collaboratively develop and implement watershed water quality activities and education activities within established schedules and by means of frequent regularly scheduled meetings;

“(3) As part of their regional management

programs:

“(a) Collaboratively develop and implement a regional urban runoff management program to reduce the discharge of pollutants from MS4s to the maximum extent practicable;

“(b) Collaboratively develop and implement a regional education program focused on residential sources of pollutants;

“(4) Annually assess the effectiveness of the jurisdictional, watershed, and regional urban runoff management programs, and collaboratively develop a long-term effectiveness assessment to assess the effectiveness of all of the urban runoff management programs; and

“(5) Jointly execute a memorandum of understanding, joint powers authority, or other formal agreement that defines the permittees’ responsibilities under the permit and establishes a management structure, standards for conducting meetings, guidelines for workgroups, and a process to address permittees’ noncompliance with the formal agreement.

“The permittees estimated complying with these conditions would cost them more than \$66 million over the life of the permit.” (*San Diego Mandates I, supra*, 18 Cal.App.5th at pp. 670-672, 226 Cal.Rptr.3d 846, fn. omitted.) (We note the parties and the trial court consolidated four of the conditions stated above into two for purposes of their arguments, resulting in a total of eight challenged conditions instead of ten. They considered the requirements to sweep streets and clean stormwater conveyances as one condition and the two requirements for developing educational programs as one condition. For purposes of consistency and argument, we will assume there are the same eight challenged permit conditions before us, although we will discuss the street sweeping condition separately.)

In 2008, permittees filed a test claim with the Commission to seek subvention under Section 6 for the eight challenged conditions. In 2010, the *553 Commission issued its ruling. It first determined that the challenged conditions were not federal mandates. Subvention is not available if the state imposes a requirement that is mandated by the federal government, unless the state mandates costs that exceed those incurred under the federal mandate. (Gov. Code, § 17556, subd. (c).)

Relevant here, the Commission further determined that six of the eight challenged conditions, all of the conditions except the two requiring development of a hydromodification management plan and **577 low impact development requirements, were reimbursable state mandates. The permit required permittees to provide a new government program of abating water pollution, and the permit conditions were unique to governmental agencies. The Commission also determined that permittees did not have authority to levy fees for complying with the six conditions because such fees would require voter approval under the state constitution. However, permittees had authority to levy fees to recover costs for the other two conditions. Permittees had police power to levy such fees as well as statutory authority to levy development fees, and because those fees would be imposed only on new real property development, they were not subject to voter approval. As a result, the Commission found that those two conditions were not reimbursable state mandates.

The State filed a petition for writ of administrative mandate against the Commission's decision. Permittees filed a cross-petition. The trial court found that the Commission had applied the wrong test in determining whether the challenged conditions were federal mandates. (*San Diego Mandates I*,

supra, 18 Cal.App.5th at pp. 674-675, 226 Cal.Rptr.3d 846.) In *San Diego Mandates I*, a panel of this court reversed the trial court's judgment, held that the Commission had applied the correct test, and concluded the challenged permit conditions were not federal mandates. Because the trial court had rested its judgment exclusively on the federal mandates ground, we remanded the matter so the trial court could consider the parties' other arguments for and against the Commission's decision. (*Id.* at pp. 667-668, 226 Cal.Rptr.3d 846.)

The trial court on remand upheld the Commission's decision in its entirety and denied both petitions for writ of mandate. It found that six of the conditions were reimbursable mandates, and the hydromodification management plan and low impact development conditions were not. The NPDES permit mandated permittees to provide a new program for purposes of Section 6, permittees lacked authority to levy fees to pay for the six conditions, and permittees had authority to levy fees for the other two conditions.

The State contends the trial court erred. It asserts the permit did not mandate a new program, and permittees have authority to levy fees for the six *554 permit conditions. In their cross-appeal, permittees contend the trial court erred, and that they do not have fee authority for the other two conditions. The Commission claims that contrary to its and the trial court's rulings, the street sweeping condition is not a reimbursable mandate because permittees have authority to levy fees for that condition.

Discussion

I.

Law of the Case and Standard of Review

[¹]In *San Diego Mandates I*, this court stated that the permit conditions were state mandates. (*San*

Diego Mandates I, supra, 18 Cal.App.5th at pp. 667, 684-689, 226 Cal.Rptr.3d 846.) However, the doctrine of law of the case does not apply because whether the conditions were state mandates was not essential to our decision in *San Diego Mandates I*. (*Gyerman v. United States Lines Co.* (1972) 7 Cal.3d 488, 498, 102 Cal.Rptr. 795, 498 P.2d 1043.) Concluding the conditions were state mandates was premature since the only issue determined by the trial court and resolved by us was whether the conditions were federal mandates. Our determining the conditions were not federal mandates did not result in the conditions automatically being reimbursable state **578 mandates, and, thus, stating they were state mandates was not necessary to our decision. We recognized these points because we remanded for the trial court to address the other issues raised by the parties which neither we nor the trial court had addressed. (*San Diego Mandates I*, at p. 668, 226 Cal.Rptr.3d 846.) Those issues included whether the conditions were a new program or higher level of service for purposes of Section 6 and whether the permittees had fee authority to fund the conditions. (*San Diego Mandates I*, at p. 674, 226 Cal.Rptr.3d 846.) The trial court addressed those issues on remand, and the parties have fully briefed them. We now address those issues on their merits.

^[2]Whether a statute or executive order imposes a reimbursable mandate under Section 6 is a question of law. We review the entire record before the Commission and independently determine whether it supports the Commission’s conclusion that six conditions here were reimbursable state mandates and two were not. (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762, 207 Cal.Rptr.3d 44, 378 P.3d 356 (*Los Angeles Mandates I*.)

*555 II.

New Program

Under Section 6, if the state by statute or executive order requires a local government to provide a “new program” or a “higher level of service” in an existing program, it must “provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service[.]” (Section 6, subd. (a); *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 201, 240 Cal.Rptr.3d 52, 430 P.3d 345.)

^[3] ^[4]For purposes of Section 6, a “program” refers to either “ [(1)] programs that carry out the governmental function of providing services to the public, or [(2)] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” [Citation.]” (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874, 16 Cal.Rptr.3d 466, 94 P.3d 589 (*San Diego Unified*)). The term “higher level of service” refers to “ ‘state mandated increases in the services provided by local agencies in existing “programs.” ’ ” (*Ibid.*)

The Commission and the trial court determined that the permit conditions constituted a new program for purposes of Section 6 because the conditions satisfied both definitions of a program. First, they required permittees to implement a new program of providing pollution abatement services to the public in addition to the stormwater drainage services.

Second, the conditions also imposed unique requirements on permittees regarding how they would provide the required pollution abatement services. The State required permittees to reduce water pollution by implementing best management practices to the maximum extent practicable, a standard that purportedly applies

exclusively to government entities and not to all other state residents or entities who must also obtain NPDES permits to discharge into the nation's waters. The latter entities who obtain NPDES permits must satisfy numeric effluent limitations.

Neither the Commission nor the trial court determined whether the permit conditions triggered subvention under Section 6 on the ground that they required permittees to provide a higher level of service in an existing program.

****579** [5]The State claims the conditions are not a new program for purposes of Section 6. We agree with the trial court and the Commission that the permit *556 conditions required permittees to provide a new program. Permittees were providing stormwater drainage systems, and the permit required them to provide a new program of water pollution abatement services in forms which permittees had not provided before and which benefited the public.

The State contends the permit conditions do not satisfy the definitions of a new program under Section 6. Regarding the first definition of a program, carrying out the governmental function of providing services to the public, the State argues that the permit conditions were not imposed to provide a service to the public; they were imposed to enforce a general ban on pollution. Federal and state laws prohibit all persons, including municipalities that discharge stormwater and urban runoff, from discharging pollutants from point sources into waters of the United States without an NPDES permit. (33 U.S.C. §§ 1311(a), 1342, 1362(5); 40 C.F.R. §§ 122.21, 122.22, 123.25; Wat. Code, §§ 13376, 19, 13050, subd. (c).) Thus, permittees had to obtain a permit because they discharge pollution, not because they are local governments. Local governments that do not discharge pollutants into United States waters are not required to have a permit.

[6]The distinction the State attempts to draw is not persuasive. The State cites no authority for the proposition that a mandatory permit condition cannot constitute a reimbursable mandate under Section 6 because it is imposed to enforce a government ban on pollution. Section 6 requires reimbursement whenever any state law or executive order mandates a new program on a local government. Nothing in the constitutional requirement distinguishes between new programs imposed directly by law and new programs imposed as a condition of a required regulatory permit.

[7]Indeed, when the Legislature attempted to exclude NPDES permit conditions from Section 6's scope by statute, the court of appeal held the statute was unconstitutional. Originally, the statutory definition of an "executive order" for purposes of Section 6 expressly excluded any order or requirement issued by the State Water Board or any regional water boards pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), such as an NPDES permit. (Gov. Code, former § 17516, subd. (c) [Stats. 1984, ch. 1459, § 1].) The court of appeal in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, held that the statutory exclusion of NPDES permit conditions imposed on local governments was contrary to the express terms of Section 6 and thus unconstitutional. "This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of article XIII B, [S]ection 6 that subvention of funds is required '[w]henver ... any state agency mandates a new program or higher level of service on any local government' " (***557** *County of Los Angeles v. Commission on State Mandates*, at p. 920, fn., 58 Cal.Rptr.3d 762omitted.) Section 6 requires subvention whether the new program is imposed directly by law or as a condition of a regulatory permit required by a state agency.

The court of appeal reached the same conclusion in *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 273 Cal.Rptr.3d 619 (*Los Angeles Mandates II*). The State argued there that NPDES permit conditions to require trash receptacles at transit stops and to inspect business sites were not a ****580** new program for purposes of Section 6 because they were imposed to prevent pollution, not to provide a public service. The court disagreed: “This view ... ignores the terms of the Regional Board’s permit; the challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions—installing and maintaining trash receptacles and inspecting business sites—that the local governments were not previously required to perform. Although the purpose of requiring trash collection at transit stops and business site inspections was undoubtedly to reduce pollution in waterways, the state sought to achieve that goal by requiring local governments to undertake new affirmative steps resulting in costs that must be reimbursed under section 6.” (*Id.* at p. 560, 273 Cal.Rptr.3d 619.) So it is here.

Continuing to assert that the NPDES permit does not impose a new program, the State argues the trial court ignored a distinction for purposes of Section 6 between a law that requires local governments to provide a public service and one that regulates conduct and applies to local governments because they choose to engage in that conduct. For example, as opposed to requiring a local government to sweep streets at regular intervals (which would be a mandated program), when the state requires a local government to sweep streets as a condition of operating an MS4 that discharges pollutants, the state is regulating the local government as a polluter, not requiring it to provide a public service. That is because the permit does not require permittees to operate an MS4. If they choose to operate one, they must mitigate

pollutant discharges, like all other polluters. Because the permit implements a general law that applies to all polluters, public and private, and because permittees chose to develop an MS4, the State claims the permit does not require permittees to provide a new public service or program.

¹⁸Generally, “if a local government participates ‘voluntarily,’ i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement.” (*Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366, 89 Cal.Rptr.3d 93.) However, that “an entity makes an initial discretionary decision that in turn triggers mandated costs” does not by itself preclude reimbursement under Section 6. (***558** *San Diego Unified, supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.) The discretionary decision may have been the result of compulsion “as a practical matter.”

¹⁹Being compelled “as a practical matter” may arise, among other instances, when an entity or its constituents face certain and severe penalties or consequences for not participating in or complying with an optional state program. For example, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 (*City of Sacramento*), the California Supreme Court determined that a state statute that required state and local governments to provide unemployment insurance benefits to their employees for the first time was a federal mandate and not a reimbursable state mandate. The case is instructive here for describing how a local government could be mandated or compelled as a practical matter to provide a service. The federal government had not required the state to enact the statute, but if the state did not enact it, state private employers would lose a federal tax credit and would face double unemployment taxation by the state and federal

governments. (*Id.* at pp. 58, 74, 266 Cal.Rptr. 139, 785 P.2d 522.) Much of cost-producing federal influence on state and local governments is “by inducement ****581** or incentive rather than direct compulsion.” (*Id.* at p. 73, 266 Cal.Rptr. 139, 785 P.2d 522.) California could have terminated its own unemployment insurance system to eliminate the double taxation, but the Supreme Court could not imagine that the drafters and adopters of [article XIII B and Section 6](#) intended to force the state “to such draconian ends.” (*City of Sacramento*, at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) The alternatives to not adopting the statute “were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (*Ibid.*)

^[10]Here, the alternative to not obtaining an NPDES permit was for permittees not to provide a stormwater drainage system. If permittees chose to operate an MS4, they were required by the State to obtain a permit. (33 U.S.C. § 1342 (p)(2)(C), (D).) While permittees at some point in the past chose to provide a stormwater drainage system, “[t]he drainage of a city in the interest of the public health and welfare is one of the most important purposes for which the police power can be exercised.” (*New Orleans Gaslight Co. v. Drainage Com. of New Orleans* (1905) 197 U.S. 453, 460, 25 S.Ct. 471, 49 L.Ed. 831.) In urbanized cities and counties such as permittees, deciding not to provide a stormwater drainage system is no alternative at all. It is “so far beyond the realm of practical reality” that it left permittees “without discretion” not to obtain a permit. (*City of Sacramento*, *supra*, 50 Cal.3d at p. 74, 266 Cal.Rptr. 139, 785 P.2d 522.) Permittees were thus compelled as a practical matter to obtain an NPDES permit and fulfill the permit’s conditions. Permittees “ ‘[did] not voluntarily participate’ in applying for a permit to operate their stormwater drainage systems; they were required to do so under state and federal law and the challenged requirements

were mandated by the Regional Board.” (*Los Angeles Mandates II*, *supra*, 59 Cal.App.5th at p. 561, 273 Cal.Rptr.3d 619).)

***559** ^[11]Despite the State’s emphasis on the point, it is irrelevant to our analysis that both public and private parties who discharge pollution from point sources into waters must obtain an NPDES permit to do so. “[T]he applicability of permits to public and private discharges does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, [S]ection 6.” (*County of Los Angeles v. Commission on State Mandates*, *supra*, 150 Cal.App.4th at p. 919, 58 Cal.Rptr.3d 762.) What matters is that permittees were compelled by state law to obtain a permit and comply with its conditions, including the provision of a different public program—water pollution abatement.

The State argues that even if the permit conditions mandate a program, the program is not new. As required by the Clean Water Act, this permit and permittees’ two prior permits required permittees to prohibit non-stormwater discharges into their MS4s and to reduce the discharge of pollutants in stormwater from MS4s to the maximum extent practicable. (33 U.S.C. § 1342 (p)(3)(B)(ii), (iii).) New permit conditions did not change that obligation. The State claims that a condition that did not appear in prior permits or has been updated to require additional expenditures is not new because it does not increase permittees’ underlying obligation to eliminate or reduce the discharge of pollutants from their MS4s to the maximum extent practicable. Rather, the condition ensures compliance with the same standard that has applied since 1990 when permittees obtained their first permit.

The application of Section 6, however, does not turn on whether the underlying ****582** obligation

to abate pollution remains the same. It applies if any executive order, which each permit is, required permittees to provide a new program or a higher level of existing services. (*Gov. Code*, § 17514.) Exercising its discretionary authority with each permit, the State imposed specific conditions it found were necessary in order for permittees to satisfy the maximum extent practicable standard. If those conditions required permittees to provide a new program or to increase services in an existing program, they triggered [Section 6](#).

^[12]To determine whether a program imposed by the permit is new, we compare the legal requirements imposed by the new permit with those in effect before the new permit became effective. (See *San Diego Unified, supra*, 33 Cal.4th at p. 878, 16 Cal.Rptr.3d 466, 94 P.3d 589; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) This is so even though the conditions were designed to satisfy the same standard of performance.

Here, it is without dispute that the challenged permit conditions impose new requirements when compared to the prior permit. Because those new ***560** requirements constitute a new program for purposes of Section 6, [Section 6](#) requires the State to reimburse permittees for the costs of the new program, subject to certain exceptions discussed next.

Because we have determined that the challenged permit conditions required permittees to provide a new program for purposes of Section 6, we need not address the parties' arguments under the second definition of a program, whether the permit conditions impose unique requirements on local governments to implement a state policy that do not apply generally to all residents and entities in the state. Nor need we discuss arguments concerning whether the permit conditions required permittees to provide a

higher level of existing services.

III.

State's Appeal Regarding Fee Authority

Even if a statute or executive order requires a local government to provide a new program, the mandate does not require subvention under [Section 6](#) if the local government "has authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." ([Section 17556\(d\)](#).)

^[13] ^[14] ^[15][Section 6](#)'s subvention for "costs" excludes expenses that are recoverable from sources other than taxes. (*County of Fresno v. State of California et al.* (1991) 53 Cal.3d 482, 488, 280 Cal.Rptr. 92, 808 P.2d 235.) "Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [Citation.] The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the 'state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,' read in its textual and historical context [S]ection 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*" (*County of Fresno v. State of California et al.*, at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.)

****583** The Commission and the trial court determined that whether permittees had authority to levy fees for the eight conditions depended on whether fees for stormwater drainage services

would have to be preapproved by the voters under article XIII D of the state constitution. The Commission and the trial *561 court found that six of the eight challenged permit conditions were reimbursable mandates because permittees did not have the authority to levy a fee for those conditions that was not subject to voter preapproval. The other two challenged conditions requiring the creation and implementation of a hydromodification management plan and low impact development requirements for certain new development were not reimbursable mandates because permittees could levy a fee for those conditions without voter approval.

The State contends in its appeal that the Commission and the trial court erred in determining the six challenged conditions were reimbursable. Despite published authority holding otherwise at the time, the State claims that fees to fund stormwater drainage systems were not subject to voter approval under article XIII D. According to the State, the published authority was wrongly decided, and a later-enacted statute declaring that fees for stormwater drainage services were not subject to voter approval applies here. The State argues that even if the fees were subject to voter approval, permittees still had authority to levy the fees regardless.

In its briefing, the Commission agrees with the State that, contrary to its earlier decision, the condition requiring street sweeping would be within permittees' fee authority as it would not be subject to voter approval.

A. Background

[16] [17] Permittees have authority pursuant to their constitutional police powers to levy regulatory and development fees. (Cal. Const., art. XI, § 7.) “[P]revention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised.” (*Freeman v.*

Contra Costa County Water Dist. (1971) 18 Cal.App.3d 404, 408, 95 Cal.Rptr. 852.)

However, the state constitution imposes procedural and substantive requirements on property-related fees adopted by local governments. Article XIII D, enacted by the voters in 1996 as part of Proposition 218 (as approved by voters, Gen. Elec. (Nov. 5, 1996), subjects all fees imposed by a local government upon a parcel or upon a person as an incident of property ownership, including a user fee for a property-related service, to a two-step approval process. (Cal. Const., art. XIII D, §§ 1, 6.) The first step is a property owner protest procedure. If a majority of the affected property owners file a written protest against the proposed fee, “the agency shall not impose the fee or charge.” (*Id.*, § 6, subd. (a)(2).)

The second step requires the proposed fee to be approved by the voters. If a property owner protest does not succeed, a property-related fee must be approved by either a majority of the property owners subject to the *562 fee or by a two-thirds vote of the electorate residing in the affected area. (Cal. Const., art. XIII D, § 6, subd. (c).) Of significance here, this voter approval requirement is subject to exceptions. The requirement does not apply to “fees or charges for sewer, water, and refuse collection services[.]” (*Ibid.*, italics added.) And no part of article XIII D, including its owner protest and voter approval requirements, applies to fees levied on real property development or fees that result from a property owner’s voluntary decision to seek a government benefit. (Cal. Const., art. XIII D, § 1; **584 *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 425-428, 9 Cal.Rptr.3d 121, 83 P.3d 518.)

In the test claim and after determining permittees had authority under their police power to impose fees for the permit conditions, the Commission

had to determine whether permittees had sufficient authority to levy a fee for purposes of [section 17556\(d\)](#) if the fee first had to be approved by voters under article XIII D. Relying on *Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351, 121 Cal.Rptr.2d 228 (*City of Salinas*), a decision by the Sixth Appellate District, the Commission determined that a fee to fund six of the eight permit conditions (all of the conditions except those requiring creation of a hydromodification plan and low impact development requirements) was required to be preapproved by the voters under article XIII D. The fee would be a property-related fee, and it would not be exempt from the voter approval requirement as a fee for sewer or water services.

In *City of Salinas*, the court of appeal determined that a fee to fund a city's program to bring its stormwater drainage system into compliance with the Clean Water Act was not a sewer or water fee for purposes of article XIII D, and thus was required to be adopted by voters. (*City of Salinas, supra*, 98 Cal.App.4th. at pp. 1356-1358, 121 Cal.Rptr.2d 228.) The court of appeal determined the word "sewer" as used in article XIII D was ambiguous and could not be interpreted under the plain meaning rule. (*City of Salinas, at p. 1357*, 121 Cal.Rptr.2d 228.) The court interpreted the term "sewer services" as excluding stormwater drainage systems and as narrowly referring to "sanitary sewerage" which carries "putrescible waste" from residences and businesses and discharges it into the sanitary sewer line for treatment. (*Id. at p. 1358, fn. 8*, 121 Cal.Rptr.2d 228.)

Because under *City of Salinas* a fee to fund stormwater drainage systems did not constitute a fee for sewer or water services and was thus subject to voter preapproval under article XIII D, the Commission determined that fees for the six permit conditions would also be subject to voter approval under article XIII D. Further, the voter

approval requirement denied permittees sufficient authority to levy a fee for purposes of [section 17556\(d\)](#). As a result, the six conditions were reimbursable state mandates under [Section 6](#).

The Commission also reasoned that denying reimbursement for those six conditions would defeat the purpose of Section 6. It was possible that ***563** permittees' voters would never approve the proposed fee, but permittees would still be required to comply with the state mandate.

The Commission applied a different analysis to the condition requiring street sweeping. The Commission found that a fee to fund street sweeping was expressly exempt from article XIII D's voting requirement because it was a fee for refuse collection. However, such a fee would still be subject to article XIII D's owner protest procedure. On that basis, the Commission determined permittees did not have sufficient authority to levy a fee to recover the costs of the street sweeping condition, and it was thus a reimbursable mandate.

Approximately seven months after the Commission issued its decision in March 2010, the Legislature broadened the scope of [section 17556\(d\)](#). The amendments, enacted by Senate Bill No. 856 (2009-2010 Reg. Sess.) (Sen. Bill 856), and effective October 19, 2010, declared that [section 17556\(d\)](#)'s prohibition of reimbursement under [Section 6](#) if the local agency can fund the mandated costs through fees or assessments "applies regardless of whether ****585** the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued." (Stats. 2010, ch. 719, § 31; [Gov. Code, § 17556, subd. \(d\).](#))

Sen. Bill 856 also provided a procedure to address the effect of newly enacted fee authority.

The statute authorizes the state and local agencies to request the Commission to adopt a new test claim decision due to a subsequent change in law that modifies the state’s liability for that test claim under [Section 6](#). (Stats. 2010, ch. 719, § 33; [Gov. Code, § 17570, subds. \(b\), \(c\)](#).) If the Commission adopts a new test claim decision, it may revise the subvention requirements effective as of the fiscal year preceding the fiscal year in which the request for redetermination was filed. ([Gov. Code, § 17570, subd. \(f\)](#).)

More than seven years after the Commission issued its decision, the Legislature enacted legislation to overrule *City of Salinas*. It adopted Senate Bill No. 231 (2017-2018 Reg. Sess.) (Sen. Bill 231), in which the Legislature for the first time defined a “sewer” for purposes of article XIII D and defined it to include stormwater drainage systems. (Stats. 2017, ch. 536, § 1; [Gov. Code § 53750, subd. \(k\)](#), part of the Proposition 218 Omnibus Implementation Act ([Gov. Code, § 53750 et seq.](#), added by Stats. 1997, ch 38, eff. July 1, 1997) (the Implementation Act).)

Enacting Sen. Bill 231, the Legislature stated the court in *City of Salinas* disregarded the plain meaning of “sewer.” ([Gov. Code, § 53751, subds. \(e\), \(f\)](#).) The common meaning of “sewer services” was not “sanitary sewerage.” ([Gov. Code, § 53751, subd. \(g\)](#).) Numerous sources predating the *564 enactment of article XIII D defined “sewer” as more than just sanitary sewers and sanitary sewerage. One source was [Public Utilities Code section 230.5](#), enacted in 1970. Sen. Bill 231’s definition of sewer mirrored that statute’s definition. ([Gov. Code, § 53751, subd. \(i\)](#).)

Sen. Bill 231 states: “The Legislature reaffirms and reiterates that the definition found in [Section 230.5 of the Public Utilities Code](#) is the definition of ‘sewer’ or ‘sewer service’ that should be used in the Proposition 218 Omnibus Implementation Act.” ([Gov. Code, § 53751,](#)

[subd. \(l\)](#).) “Sewer” should be interpreted to include services necessary to dispose surface or storm waters. ([Gov. Code, § 53751, subd. \(m\)](#).)

At trial, the State contended that Sen. Bill 231 overturned *City of Salinas*, and that under the new statute, fees for the six conditions were sewer fees exempt from voter approval under article XIII D, and thus within permittees’ authority to levy. The trial court disagreed. It stated that even if Sen. Bill 231 overturned *City of Salinas*, it found “nothing ‘mistaken’ about the Commission’s reliance on that case when it issued its decision. The Commission issued its decision in 2010, and it was not free to disregard relevant case law—including [*City of Salinas*]—on the theory that the Legislature might change that law in the future. [Sen. Bill 231] was enacted in 2017 and went into effect January 1, 2018. How can a law that went into effect in 2018 retroactively invalidate a decision issued in 2010? The State never addresses this question, and the short answer is that it cannot.”

The State attempted to argue Sen. Bill 231 was retroactive in a supplemental brief, but the trial court found the argument was insufficient to rebut the presumption that statutes operate prospectively only. The court stated that Sen. Bill 231 “‘cannot retroactively apply to invalidate the Commission’s decision’ and ‘cannot form the basis for a writ reversing [that decision].’”

****586 B. Analysis**

The State contends that fees for the six permit conditions do not require voter approval; thus, permittees have authority to levy such fees, and, as a result, under [section 17556\(d\)](#), [Section 6](#) does not require the State to reimburse permittees for the costs incurred to comply with the six conditions. The fees do not require voter approval because the Commission’s authority that they do require voter approval, *City of Salinas*, was wrongly decided, and we should not follow it. That court expressly disregarded the

plain meaning of the term “sewer” as including storm sewers. The Legislature in Sen. Bill 231 criticized *City of Salinas* on that point and declared the plain meaning of “sewer” was to include storm drainage systems.

The State also argues that Sen. Bill 231 and its definition of “sewer” govern this case. The Legislature adopted Sen. Bill 231 to clarify the meaning *565 of “sewer” in article XIII D. Statutes that clarify existing law or are retroactive apply to cases such as this that were pending and in which no final judgment had been entered when the statute was enacted. Additionally, the State argues that under Sen. Bill 856’s amendment to section 17556(d), newly adopted fee authority such as Sen. Bill 231 applies to this case.

The State further argues that even if fees to fund the challenged permit conditions are subject to voter approval, that fact does not deprive permittees of adequate authority to adopt fees for purposes of Section 6. For authority to support this argument, the State relies on *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 244 Cal.Rptr.3d 769 (*Paradise Irrigation Dist.*), in which a panel of this court held that article XIII D’s owner protest procedure did not deprive a local agency of authority to impose a property-related fee, and thus the mandated expenses in that case were not reimbursable due to section 17556(d). (*Paradise Irrigation Dist.*, at pp. 194-195, 244 Cal.Rptr.3d 769.) The state argues the same reasoning should apply to article XIII D’s voter approval requirement.

The Commission agrees with the State on one point: its determination that the street sweeping condition was a reimbursable mandate and the trial court’s affirmance of that finding should be reversed. A fee for this condition is exempt from article XIII D’s voter approval requirement because the fee would be for refuse collection.

On that basis, and also because this court in *Paradise Irrigation Dist.* determined that article XIII D’s owner protest procedure did not deny a local government of authority to levy a fee, the Commission agrees with the State that permittees have authority to levy a fee to recover the costs of street sweeping, and the condition is thus not a reimbursable mandate under Section 6.

1. Definition of “sewer” at the time of the Commission’s decision

We are asked to interpret the term “sewer” as that term was used in the exemption of fees for sewer services from article XIII D’s voter approval requirement at the time the Commission issued its decision. (Cal. Const., art. XIII D, § 6, subd. (c).) We do not dispute permittees’ point that under stare decisis the Commission and the trial court were required to follow *City of Salinas* when they made their decisions. However, while they may have been bound by *City of Salinas* at the time they ruled, we are not. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.) Even without considering Sen. Bill 231, we may disagree with *City of Salinas* and not apply it in this direct appeal if we **587 find it unpersuasive. (See *County of Kern v. State Dept. of Health Care Services* (2009) 180 Cal.App.4th 1504, 1510, 104 Cal.Rptr.3d 43.) Nonetheless, we reach the same holding, setting aside for the moment Sen. Bill 231’s possible application.

*566 [18] [19] [20]“ ‘When we interpret a statute, “[o]ur fundamental task ... is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in

absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.” [Citation.] “Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.”’ (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166 [158 Cal.Rptr.3d 639, 302 P.3d 1026].)” (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616-617, 214 Cal.Rptr.3d 274, 389 P.3d 848 (*City of San Jose*).)

[21] [22] [23] [24] [25] [26] We apply these same principles to interpreting voter initiatives, except we do so to determine the voters’ intent. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.) We turn first to the initiative’s language, giving the words their ordinary meaning as understood by “the average voter.” (*People v. Adelman* (2018) 4 Cal.5th 1071, 1080, 232 Cal.Rptr.3d 421, 416 P.3d 786.) “ ‘The [initiative’s] language must also be construed in the context of the statute as a whole and the [initiative’s] overall ... scheme.’ (*People v. Rizo* (2000) 22 Cal.4th 681, 685 [94 Cal.Rptr.2d 375, 996 P.2d 27].) ‘Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.’ (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543 [277 Cal.Rptr. 1, 802 P.2d 317].) Where there is ambiguity in the language of the measure, “[b]allot summaries and arguments may be considered when determining the voters’ intent and understanding of a ballot measure.’ (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 673, fn. 14 [194 Cal.Rptr.

781, 669 P.2d 17].)” (*Professional Engineers in California Government v. Kempton*, at p. 1037, 56 Cal.Rptr.3d 814, 155 P.3d 226.) Ambiguities in initiatives may also be resolved by referring to “the contemporaneous construction of the Legislature.” (*Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 203, 182 Cal.Rptr. 324, 643 P.2d 941, italics added.)

Systems that collect water from a residence’s toilets and sinks and treat the waste water at a water treatment plant are commonly referred to as sewers or *567 sanitary sewers. (*City of Salinas, supra*, 98 Cal.App.4th at p. 1357, 121 Cal.Rptr.2d 228.) Stormwater drainage systems usually deposit stormwater into the surface waters of the state. These are commonly referred to as storm sewers, storm drains, “storm drain systems,” and “storm sewer systems.” (*Los Angeles Mandates I, supra*, 1 Cal.5th at pp. 754, 757, 207 Cal.Rptr.3d 44, 378 P.3d 356.) The question is whether **588 voters intended the word “sewer” in article XIII D to exempt fees for only sanitary sewers or both sanitary and stormwater sewers from the measure’s voting requirement.

[27] We may look to dictionary definitions to determine the usual and ordinary meaning of a statutory term. (*MCI Communications Services, Inc. v. California Dept. of Tax & Fee Admin.* (2018) 28 Cal.App.5th 635, 644, 239 Cal.Rptr.3d 241.) Dictionary definitions of “sewer” indicate the word can refer to both sanitary sewers and storm drainage systems. The Merriam-Webster’s Unabridged Dictionary defines a sewer as “a ditch or surface drain” or “an artificial usually subterranean conduit to carry off water and waste matter (such as surface water from rainfall, household waste from sinks or baths, or waste water from industrial works).” (Merriam-Webster Unabridged Dict. Online (2022) <<https://unabridged.merriam-webster.com/unabridged/sewer>, par.3> [as of

Aug. 23, 2022], archived at: <<https://perma.cc/EKA3-6ETL>>.)

The Oxford English Dictionary defines sewer as an “artificial watercourse for draining marshy land and carrying off surface water into a river or the sea,” and an “artificial channel or conduit, now usually covered and underground, for carrying off and discharging waste water and the refuse from houses and towns.” (Oxford English Dict. Online (2022) <<https://www.oed.com/view/Entry/176971?rskey=EtxAX4&result=1&isAdvanced=false#id,par.1>> [as of Aug. 23, 2022], archived at: <<https://perma.cc/V4XG-YDVS>>.)

[28] [29] [30] [31] But we do not start and end statutory interpretation with dictionary definitions. “[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.)

[32] Analyzing Proposition 218’s use of the word “sewer” in context renders its meaning clear. In the initiative, we find a clause – the measure’s only other *568 use of the word “sewer” – in which the voters distinguished the word “sewer” from a drainage system. Section 4 of article XIII D established procedures and voter approval requirements for creating assessments. Section 5 of article XIII D imposed those requirements on all existing, new, or increased assessments with

exceptions. Of relevance here, one of the exempt existing assessments is: “Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, *sewers*, water, flood control, *drainage systems* or vector control.” (Cal. Const., art. XIII D, § 5, subd. (a), italics added.)

[33] [34] If possible, we construe statutes and constitutional provisions to give meaning to every word, phrase, sentence, and part of an act. (*City of San Jose, supra*, 2 Cal.5th at p. 617, 214 Cal.Rptr.3d 274, 389 P.3d 848.) Thus, when the Legislature, or in this case the voters, use different words in the same sentence, we assume they intended the words to have different meanings. (**589 *K.C. v. Superior Court* (2018) 24 Cal.App.5th 1001, 1011, fn. 4, 235 Cal.Rptr.3d 325.) By using “sewers” and “drainage systems” in the same sentence, the voters intended the words to have different meanings. Were it not so, the use of the terms to convey the same meaning would render them superfluous, an interpretation courts are to avoid. (*Klein v. United States of America* (2010) 50 Cal.4th 68, 80, 112 Cal.Rptr.3d 722, 235 P.3d 42.)

[35] Additionally, under the maxim *expressio unius est exclusio alterius*, “[w]hen language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful,” and that the Legislature intended a different meaning. (*In re Ethan C.* (2012) 54 Cal.4th 610, 638, 143 Cal.Rptr.3d 565, 279 P.3d 1052; *Klein v. United States of America, supra*, 50 Cal.4th at p. 80, 112 Cal.Rptr.3d 722, 235 P.3d 42.)

Section 5 of article XIII D addresses “sewers” and “drainage systems,” but section 6 of article XIII D, the section that contains the exemption from the measure’s voter approval requirement, exempts only fees for sewer, water, and refuse

collection services. It does not exempt fees for drainage systems. Storm drainage systems generally are a means to provide surface water drainage. (See *Biron v. City of Redding* (2014) 225 Cal.App.4th 1264, 1269, 170 Cal.Rptr.3d 848.) And although article XIII D and the Implementation Act at the time of the Commission's decision did not define "sewer," the Implementation Act did define a "drainage system" as "any system of public improvements that is intended to provide for erosion control, for landslide abatement, or for *other types of water drainage*." (Gov. Code, § 53750, subd. (d), italics added.) Given that the voters intended to differentiate between "sewers" and "drainage systems," and that storm drainage systems provide water drainage, we conclude the voters did not intend the exemption of "sewer" service fees from article XIII D's voter-approval requirement to include fees for stormwater drainage systems

***569** This interpretation is strengthened by Proposition 218's purposes. The voters adopted Proposition 218 to "limit[] the methods by which local governments exact revenue from taxpayers without their consent." (Prop. 218, § 2, reprinted at 1 Stats. 1996, p. A-295.) To that end, the voters declared that the measure's provisions "shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, § 5, reprinted at 1 Stats. 1996, p. A-299.)

Thus, required as we are to interpret any exception to the measure's purpose narrowly, we conclude, based on a contextual and narrow reading of the exception of fees for sewer services and not drainage services, that the term sewer in the voter approval exception provision of article XIII D's [section 6](#) referred only to sanitary sewers at the time of the Commission's decision. Because we have determined the term's meaning is clear in its context, we need not rely on other interpretive aids. (*Lungren v.*

Deukmejian, supra, 45 Cal.3d at p. 735, 248 Cal.Rptr. 115, 755 P.2d 299.)

2. Sen. Bill 231

Having determined that article XIII D's exception of sewer fees from voter approval did not include fees for stormwater drainage systems at the time of the Commission's decision, we must determine the effect, if any, of Sen. Bill 231. The State contends the statute applies to this case either as a clarification of existing law or as a retroactive statute.

****590** a. Background

Following the enactment of Proposition 218, the Legislature enacted the Implementation Act to prescribe specific procedures and parameters for local jurisdictions in complying with the initiative. (Gov. Code, § 53750 et seq.; Leg. Counsel's Dig., Sen. Bill No. 218 (1997-1998 Reg. Sess.) Stats. 1997.) [Government Code section 53750 \(section 53750\)](#), part of the Implementation Act, defined terms used in articles XIII C and XIII D. At the time of its enactment in 1997, [section 53750](#) did not include a definition of the term "sewer." (Stats. 1997, ch. 38, § 5.) An amendment to the statute in 1998 also did not define the term. (Stats. 1998, ch. 876, § 10.)

After *City of Salinas* was decided, the Legislature amended [section 53750](#) in 2002. This legislation was filed with the Secretary of State three months after the court of appeal filed *City of Salinas*. (Stats. 2002, ch. 395; *City of Salinas, supra*, 98 Cal.App.4th 1351, 121 Cal.Rptr.2d 228.) Yet again, the Legislature did not add a definition of the word "sewer" to the statute. (Stats. 2002, ch. 395, § 3.) Another amendment in 2014 also did not define the term. (Stats. 2014 ch. 78, § 2.)

***570** In 2017, 15 years after *City of Salinas* was published, the Legislature enacted Sen. Bill 231 to define "sewer" in article XIII D and to overrule *City of Salinas*. Sen. Bill 231 amended section

53570 by defining “sewer,” for purposes of article XIII D’s exemption of sewer fees from its voter approval requirement, to include stormwater drainage systems. “Sewer” includes “systems, all real estate, fixtures, and personal property ... to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including ... sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection of sewage, industrial waste, or surface or storm waters.” (Gov. Code, § 53750, subd. (k).)

Also as part of Sen. Bill 231, the Legislature enacted a new statute, [Government Code section 53751 \(section 53571\)](#), to overrule *City of Salinas*.² The Legislature ****591** criticized the *City of Salinas* court for “disregarding the plain meaning of the term ‘sewer’ ” and “substitute[ing] its own judgment for ***571** the judgement of the voters.” (Gov. Code, § 53751, subd. (f).) The Legislature found that sewer and water services ****592** are commonly considered to include “the conveyance and treatment of dirty water, whether that water is rendered unclean by coming into contact with sewage or by flowing over the built-out human environment and becoming urban runoff.” (Gov. Code, § 53571, subd. (h).) The ***572** Legislature cited to numerous statutes and cases that it claimed rejected the notion that “sewer” applies only to sanitary sewers. (Gov. Code, § 53751, subd. (i).)

[Section 53751](#) declared that the plain meaning rule shall apply when interpreting the definitions set forth in [section 53750](#). (Gov. Code, § 53751, subd. (k).) The statute concluded, “The Legislature reaffirms and reiterates that the definition found in [Section 230.5 of the Public Utilities Code](#) is the definition of ‘sewer’ or ‘sewer service’ that should be used in the Proposition 218 Omnibus Implementation Act... ‘[S]ewer’ should be interpreted to include

services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters, and any entity that collects, treats, or disposes of any of these necessarily provides sewer service.” (Gov. Code, § 53751, subds. (l), (m).)

b. Analysis

The State contends Sen. Bill 231 applies here because this matter was pending as of the statute’s enactment, and the Legislature intended the statute either to be a clarification of existing law or to apply retroactively to all pending cases.

Permittees and the Commission argue Sen. Bill 231 does not apply here because the Legislature adopted the statute to change the law, and it did not clearly express its intent that the measure applied retroactively. They also claim the statute does not apply because at the time the Commission made its decision in this matter, it was required to follow *City of Salinas*, and the Commission’s decision is now final.

^[36] ^[37]Initially, we disagree with the Commission and permittees that Sen. Bill 231 cannot apply here because the Commission’s decision is final. That argument confuses administrative finality with finality that binds parties to a fully litigated final judgment. The Commission’s decision was administratively final and thus subject to judicial review. However, to be final so as to be binding on the parties and immune from retroactive or clarifying legislation, the decision must be free from direct attack by a petition for writ of administrative mandate either because a judgment resolving such a petition has become final and conclusive or because a petition was not timely filed. (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1201, 90 Cal.Rptr.3d 501; see *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 169, 275 Cal.Rptr. 449.) The Commission’s decision obviously is still under judicial review and subject to direct attack.

Thus, despite the length of time since the Commission’s decision was made, due to the decision’s prolonged and ongoing judicial *573 review, it is not final for purposes of determining whether a retroactive or clarifying statute applies to it.

[38] [39]“A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207-1208 [246 Cal.Rptr. 629, 753 P.2d 585]; *Aetna Cas[ualty] & Surety Co. v. Ind[ustrial] Acc. Com.* (1947) 30 Cal.2d 388, 393 [182 P.2d 159].) ... Of course, when the Legislature clearly intends a statute to operate retrospectively, we are obliged to carry out that intent unless due process considerations prevent us. (*593 *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587, 592 [128 Cal.Rptr. 427, 546 P.2d 1371].)

[40] [41] [42]“A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. (Cf. *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568 [20 Cal.Rptr.2d 341, 853 P.2d 507].) Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute’s true meaning. [Citations.] Such a legislative act has no retrospective effect because the true meaning of the statute remains the same.” (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, 62 Cal.Rptr.2d 243, 933 P.2d 507 (*Western Security Bank*).)

[43]We turn first to the State’s argument that Sen. Bill 231 merely clarified existing law. “A statute that merely clarifies, rather than changes, existing law is properly applied to transactions

predating its enactment. (*Western Security Bank, [supra]*, 15 Cal.4th 232, 243 [62 Cal.Rptr.2d 243, 933 P.2d 507].) However, a statute might not apply retroactively when it substantially changes the legal consequences of past actions, or upsets expectations based in prior law. (*Id.* at p. 243, 62 Cal.Rptr.2d 243, 933 P.2d 507]; see also *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 269 [114 S.Ct. 1483, 128 L.Ed.2d 229] (*Landgraf*).)

[44] [45]“ [T]he interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts.’ (*Western Security Bank, supra*, 15 Cal.4th at p. 244 [62 Cal.Rptr.2d 243, 933 P.2d 507].) When [the California Supreme Court] ‘finally and definitively’ interprets a statute, the Legislature does not have the power to then state that a later amendment merely declared existing law. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 473 [20 Cal.Rptr.3d 428, 99 P.3d 1015] (*McClung*).)

[46]“However, ‘if the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later *574 Legislature as to what an earlier Legislature intended is entitled to consideration. [Citation.] But even then, “a legislative declaration of an existing statute’s meaning” is but a factor for a court to consider and “is neither binding nor conclusive in construing the statute.” [Citation.]’ (*McClung, supra*, 34 Cal.4th at p. 473 [20 Cal.Rptr.3d 428, 99 P.3d 1015] and cases cited.)

....

[47] [48]“A legislative declaration that an amendment merely clarified existing law ‘cannot be given an obviously absurd effect, and the court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms.’ (*California Emp.[loyment Stabilization] etc. Com. v. Payne* (1947) 31 Cal.2d 210, 214 [187 P.2d 702].) Material

changes in language, however, may simply indicate an effort to clarify the statute’s true meaning. (*Western Security Bank, supra*, 15 Cal.4th at p. 243 [62 Cal.Rptr.2d 243, 933 P.2d 507].) ‘One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation[.]’ (*Ibid.*) ‘ “ ‘An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute.... [¶] If the amendment was enacted soon after controversies **594 arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act—a formal change—rebutting the presumption of substantial change.’ [Citation.]” ’ (*Ibid.*)” (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922-923, 44 Cal.Rptr.3d 223, 135 P.3d 637.)

[49]“We look to ‘the surrounding circumstances’ as well as the Legislature’s intent when determining whether a statute changed or merely clarified the law.” (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 184, 46 Cal.Rptr.3d 49, 138 P.3d 200.)

[50]Sen. Bill 231 did not merely clarify the law; it changed the law. Since 2002, *City of Salinas* had defined the term “sewer” in Proposition 218 as referring only to sanitary sewers. Nothing in the record indicates any other court had interpreted the term as used in Proposition 218 or was interpreting the term when the Legislature adopted Sen. Bill 231. Sen. Bill 231 overruled *City of Salinas* and changed the law to define “sewer” to include stormwater drainage systems. “[A]lthough the Legislature may amend a statute to overrule a judicial decision, doing so *changes* the law” (*McClung, supra*, 34 Cal.4th at pp. 473-474, 20 Cal.Rptr.3d 428, 99 P.3d 1015.)

In addition, this was not a case where the Legislature adopted an amendment soon after a controversy arose concerning the proper interpretation of Proposition 218. Indeed, there is nothing in the record indicating any controversy arose immediately prior to Sen. Bill 231’s adoption. The statute *575 mentions only *City of Salinas* as its reason, and that decision was issued 15 years before Sen. Bill 231 was enacted. The Commission issued its decision in this case seven years before the Legislature adopted Sen. Bill 231. We are not required to accept as a legislative declaration or clarification of the original statute’s meaning an amendment which was adopted so long after any controversy arose from *City of Salinas*’s interpretation of Proposition 218. (See *Carter v. California Dept. of Veterans Affairs, supra*, 38 Cal.4th at p. 923, 44 Cal.Rptr.3d 223, 135 P.3d 637.)

[51]Having concluded Sen. Bill 231 did not merely clarify the law, we turn to determine whether the Legislature intended the statute to operate retroactively. “[A] new law operates ‘retroactively’ when it changes ‘ “ ‘the legal consequences of past conduct by imposing new or different liabilities based upon such conduct.’ ” ’ [Citation.] We have asked whether the new law ‘ “ ‘substantially affect[s] existing rights and obligations.’ ” ’ [Citation.]” (*McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 229, 283 Cal.Rptr.3d 323, 494 P.3d 24.)

[52] [53] [54]“[U]nless there is an ‘express retroactivity provision, a statute will *not* be applied retroactively unless it is *very clear* from extrinsic sources that the Legislature ... must have intended a retroactive application’ (*Evangelatos [v. Superior Court], supra*, 44 Cal.3d at p. 1209 [246 Cal.Rptr. 629, 753 P.2d 585]).... [A] statute’s retroactivity is, in the first instance, a policy determination for the Legislature and one to which courts defer absent ‘some constitutional objection’ to retroactivity.

(*Western Security Bank*, [supra,] 15 Cal.4th [at p.] 244 [62 Cal.Rptr.2d 243, 933 P.2d 507].) But ‘a statute that is ambiguous with respect to retroactive application is construed ... to be unambiguously prospective.’ (*I.N.S. v. St. Cyr* [(2001)] 533 U.S. [289,] 320-321, fn. 45 [121 S.Ct. 2271, 150 L.Ed.2d 347]); *Lindh v. Murphy* (1997) 521 U.S. 320, 328, fn. 4 [117 S.Ct. 2059, 138 L.Ed.2d 481] [‘ “retroactive” effect adequately authorized by a statute’ only when statutory language was ‘so clear that it could sustain only one interpretation’].)” **595 (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841, 123 Cal.Rptr.2d 40, 50 P.3d 751.)

The State claims the Legislature’s statements in [section 53751](#) constitute a legally sufficient expression that the Legislature intended Sen. Bill 231 to apply retroactively. The State also contends that Sen. Bill 856’s provision, that an agency’s authority to levy fees prevents subvention under [Section 6](#) regardless of whether the authority was adopted prior to or after the date the Commission issued its decision, further supports the Legislature’s intent to apply Sen. Bill 231 retroactively.

^[55]It is not clear that the Legislature intended Sen. Bill 231 to apply retroactively. Sen. Bill 231 contains no express statement that the Legislature *576 intended the bill to apply retroactively. There is no statement that the bill merely declared existing law. Sen. Bill 231 overruled *City of Salinas*, but the length of time between that case and Sen. Bill 231’s enactment suggests the Legislature did not necessarily intend for Sen. Bill 231 to be retroactive. The measure’s strongest statement of retroactive intent is the statement in [section 53751](#) that the Legislature “reaffirms and reiterates that the definition found in [Section 230.5 of the Public Utilities Code](#) is the definition of ‘sewer’ or ‘sewer service’ that should be used in the Proposition 218 Omnibus Implementation Act.”

(Gov. Code, § 53751, subd. (l).) “Reaffirms and reiterates” is incorrect language when the Legislature had never before declared, affirmed, or iterated the meaning of “sewer” in the Implementation Act.

^[56]As discussed above, Proposition 218, enacted in 1996, distinguished between sewers and drainage systems. The Legislature adopted the Implementation Act in 1997, but it did not then nor in a 1998 amendment define the term “sewer.” *City of Salinas* defined the term in 2002. The Legislature amended the Implementation Act three months later, but it did not define “sewer” or otherwise respond to *City of Salinas*. Fifteen years later, the Legislature overruled *City of Salinas* in Sen. Bill 231 and defined “sewer” in the Implementation Act for the first time. Where the statement that the Legislature reaffirmed and reiterated a prior position is erroneous, especially when the new legislation changed the law, the statement is insufficient to establish a very clear expression of retroactive intent. (See *McClung*, supra, 34 Cal.4th at pp. 475-476, 20 Cal.Rptr.3d 428, 99 P.3d 1015 [erroneous statement that an amendment merely declared existing law where it actually changed the law was insufficient to overcome the strong presumption against retroactivity].)

^[57]Sen. Bill 856 also does not indicate Sen. Bill 231 should apply retroactively. That bill amended [section 17556\(d\)](#), the statute that prevents subvention if the local agency has fee authority, to provide that the limitation applied regardless of whether the authority to levy fees was enacted or adopted prior to or after the date on which the mandate was issued. However, Sen. Bill 856 also provided a process whereby a party may request the Commission to reconsider a prior decision based on a subsequent change of law. (Gov. Code, §§ 17514, 17570, subs. (b)-(d), (f), 17556, subd. (d).) If the Commission determines that a change of law reduces the State’s subvention obligation, the Commission

can revise the subvention requirements but starting no earlier than the fiscal year preceding the fiscal year in which the request for reconsideration was filed. (Gov. Code, § 17556, subd. (b).) Here, there is no evidence the State pursuant to Sen. Bill 856 has sought reconsideration of the Commission's decision based on Sen. Bill 231. And even if it had, Sen. Bill 856 **596 would not render Sen. Bill 231 retroactive to the point in time in 2007 when the Commission issued its decision in this matter.

*577 It is obvious that the Legislature intended Sen. Bill 231 to overrule *City of Salinas*. It is not obvious, however, that the Legislature intended Sen. Bill 231 to apply retroactively. We therefore conclude Sen. Bill 231 does not apply to this case.

3. *Application of Paradise Irrigation Dist.*

The State contends that even if Sen. Bill 231 is not retroactive, we still may conclude permittees have authority to levy fees for the six permit conditions. In *Paradise Irrigation Dist.*, *supra*, 33 Cal.App.5th 174, 244 Cal.Rptr.3d 769, a panel of this court ruled that “the possibility of a protest” under article XIII D did not eviscerate the local agencies' ability to levy fees to comply with the state mandate. (*Paradise Irrigation Dist.* at p. 194, 244 Cal.Rptr.3d 769.) The State argues that our reasoning in *Paradise Irrigation District* applies equally here, that the required voter approval under article XIII D, like the protest procedure, does not extinguish a local agency's ability to raise fees.

In *Paradise Irrigation Dist.*, a group of irrigation and water districts contended they were entitled to subvention under Section 6 because they did not have sufficient legal authority to levy fees to pay for water service improvements mandated by the Water Conservation Act of 2009 (Stats. 2009-2010, 7th Ex. Sess. 2009-2010, ch. 4, § 1.) The districts claimed they did not have fee authority because under article XIII D, although the fees

would not require voter approval, they could be defeated by a majority of water customers filing written protests. (*Paradise Irrigation Dist.*, *supra*, 33 Cal.App.5th at p. 182, 244 Cal.Rptr.3d 769.)

We disagreed with the districts. We based our opinion on the analysis in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 46 Cal.Rptr.3d 73, 138 P.3d 220 (*Bighorn*). That case concerned the validity of a proposed initiative that sought to reduce a local water district's charges and require any future charges to be preapproved by the voters. The California Supreme Court held the initiative could do the former but not the latter. State statutes had delegated exclusive authority to the districts to set their fees, and such legislative actions made under exclusive authority generally are not subject to initiatives. (*Id.* at pp. 210, 219, 46 Cal.Rptr.3d 73, 138 P.3d 220; see *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775-777, 38 Cal.Rptr.2d 699, 889 P.2d 1019.) However, article XIII C, section 3 of the state constitution states the initiative power may not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee, or charge. The district's water charges were fees subject to article XIII C, and thus an initiative could seek to reduce the districts' rates. (*Bighorn*, at pp. 212-217, 46 Cal.Rptr.3d 73, 138 P.3d 220.) But nothing in article XIII C authorized initiative measures to impose voter-approval requirements for new or increased fees and charges. And article XIII D expressed the voters' intent *578 that water service fees do not need to be approved by voters. Thus, the exclusive delegation rule barred the proposed initiative's attempt to subject the district's exercise of its fee-setting authority to voter approval. (*Bighorn*, at pp. 215-216, 218-219, 46 Cal.Rptr.3d 73, 138 P.3d 220.)

In a long passage, the Supreme Court commented, “[B]y exercising the initiative power voters may decrease a public water

agency's fees and charges for water service, ****597** but the agency's governing board may then raise other fees or impose new fees without prior voter approval. Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good faith, and that the political process will eventually lead to compromises that are mutually acceptable and both financially and legally sound. (See *DeVita v. County of Napa, supra*, 9 Cal.4th at pp. 792-793, 38 Cal.Rptr.2d 699, 889 P.2d 1019 [‘We should not presume ... that the electorate will fail to do the legally proper thing.’].) We presume local voters will give appropriate consideration and deference to a governing board's judgments about the rate structure needed to ensure a public water agency's fiscal solvency, and we assume the board, whose members are elected ... will give appropriate consideration and deference to the voters' expressed wishes for affordable water service. The notice and hearing requirements of subdivision (a) of section 6 of California Constitution article XIII D [the owner protest procedures] will facilitate communications between a public water agency's board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers' concerns that the agency's water delivery charges are excessive.” (*Bighorn, supra*, 39 Cal.4th at pp. 220-221, 46 Cal.Rptr.3d 73, 138 P.3d 220, fns. omitted.)

Deciding *Paradise Irrigation Dist.*, we found in *Bighorn* “an approach to understanding how voter powers to affect water district rates affect the ability of the water districts to recover their costs.” (*Paradise Irrigation Dist., supra*, 33 Cal.App.5th at p. 191, 244 Cal.Rptr.3d 769.) Like the water district in *Bighorn*, the districts in *Paradise Irrigation Dist.* had statutory authority to set their fees for water service improvements, and those fees were not subject to prior voter approval. We held the districts thus had sufficient

authority to set fees to recover the costs of complying with the state mandate. (*Id.* at pp. 192-193, 244 Cal.Rptr.3d 769.) Article XIII D's protest procedure and similar statutory protest procedures, like the limited initiative power affirmed in *Bighorn*, did not divest the districts of their fee authority. Rather, the protest procedures created a power-sharing arrangement similar to that in *Bighorn* where presumably voters would appropriately consider the state mandated requirements imposed on the districts. (*Paradise Irrigation Dist.*, at pp. 194-195, 244 Cal.Rptr.3d 769.) “[T]he possibility of a protest under article XIII D, section 6, does not eviscerate [the districts'] ability to raise fees to comply with the [Water] Conservation Act.” (*Id.* at p. 194, 244 Cal.Rptr.3d 769.)

***579** The State contends the reasoning in *Paradise Irrigation Dist.* applies equally here where article XIII D requires the voters to preapprove fees. It argues that as with the voter protest procedure, under article XIII D permittees' governing bodies and the voters who elected those officials share power to impose fees. The governing bodies propose the fee, and the voters must approve it. The “fact that San Diego property owners could theoretically withhold approval—just as a majority of the governing body could theoretically withhold approval to impose a fee—does not ‘eviscerate’ San Diego's police power; that power exists regardless of what the property owners, or the governing body, might decide about any given fee.”

The State's argument does not recognize a key distinction we made in *Paradise Irrigation Dist.*: water service fees were not subject to voter approval. We contrasted article XIII D's protest procedure with the voter-approval requirement imposed by Proposition 218 on new taxes. Under ****598** article XIII C, no local government may impose or increase any general or special tax “unless and until that tax is submitted to the

electorate and approved” by a majority of the voters for a general tax and by a two-thirds vote for a special tax. (Cal. Const., art. XIII C, § 2, subds. (b), (d).) Under article XIII D, however, water service fees do not require the consent of the voters. (Cal. Const., art. XIII D, § 6, subd. (c).) (*Paradise Irrigation Dist.*, *supra*, 33 Cal.App.5th at p. 192, 244 Cal.Rptr.3d 769.) The implication is the voter approval requirement would deprive the districts of fee authority.

Since the fees in *Paradise Irrigation Dist.* were not subject to voter approval, the protest procedure created a power sharing arrangement like that in *Bighorn* which did not deprive the districts of their fee authority. In *Bighorn*, the power-sharing arrangement existed because voters could possibly bring an initiative or referendum to reduce charges, but the validity of the fee was not contingent on the voters preapproving it. In *Paradise Irrigation Dist.*, the power-sharing arrangement existed because voters could possibly protest the water fee, but the validity of the fee was not contingent on voters preapproving the fee. The water fee was valid unless the voters successfully protested, an event the trial court in *Paradise Irrigation Dist.* correctly described as a “speculative and uncertain threat.” (*Paradise Irrigation Dist.*, *supra*, 33 Cal.App.5th at p. 184, 244 Cal.Rptr.3d 769.)

^{158]}Here, a fee for stormwater drainage services is not valid unless and until the voters approve it. For property-related fees, article XIII D limits permittees’ police power to proposing the fee. Like article XIII C’s limitation on local governments’ taxing authority, article XIII D provides that “[e]xcept for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the ***580** property owners of the property subject to the fee or charge or, at the option of the agency,

by a two-thirds vote of the electorate residing in the affected area.” (Cal. Const., art. XIII D, § 6, subd. (c).) The State’s argument ignores the actual limitation article XIII D imposes on permittees’ police power. Permittees expressly have no authority to levy a property-related fee unless and until the voters approve it. There is no power sharing arrangement.

This limitation is crucial to our analysis. The voter approval requirement is a primary reason **Section 6** exists and requires subvention. As stated earlier, the purpose of **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 articles XIII A and XIII B impose.” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) And what are those limitations? Voter approval requirements, to name some.

Articles XIII A and XIII B “work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.” (*City of Sacramento*, *supra*, 50 Cal.3d at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.) Article XIII A prevents local governments from levying special taxes without approval by two-thirds of the voters. (Cal. Const., art. XIII A, § 4.) It also prevents local governments from levying an ad valorem tax on real and personal property. (Cal. Const., art. XIII A, § 1.) Article XIII B, adopted as the “next logical step” to article XIII A, limits the growth of appropriations made from ****599** the proceeds of taxes. (Cal. Const., art. XIII B, §§ 1, 2, 8; *City Council v. South* (1983) 146 Cal.App.3d 320, 333-334, 194 Cal.Rptr. 110.) And, as stated above, article XIII C extends the voter approval requirement to local government general taxes. (Cal. Const., art. XIII C, § 2, subd. (b).)

Subvention is required under [Section 6](#) because these limits on local governments' taxing and spending authority, especially the voter approval requirements, deprive local governments of the authority to enact taxes to pay for new state mandates. They do not create a power-sharing arrangement with voters. They limit local government's authority to proposing a tax only, a level of authority that does not guarantee resources to pay for a new mandate. [Section 6](#) provides them with those resources.

Article XIII D's voter approval requirement for property-related fees operates to the same effect. Unlike the owner protest procedure at issue in *Paradise Irrigation Dist.*, the voter approval requirement does not create a power sharing arrangement. It limits a local government's authority to proposing a fee only; again, a level of authority that does not guarantee resources to pay for a state mandate. [Section 6](#) thus requires subvention because of ***581** Article XIII D's voter approval requirement. Contrary to the State's argument, *Paradise Irrigation Dist.* does not compel a different result.

4. Street sweeping condition

The Commission originally determined that permittees lacked sufficient authority to levy a fee for the street sweeping condition, and thus it was a reimbursable mandate. The Commission found that although permittees had authority to levy a fee for street sweeping pursuant to [Public Resources Code section 40059](#), and that such a fee would be exempt from article XIII D's voter approval requirement as a refuse collection fee, the fee would not be exempt from article XIII D's owner protest procedure. ([Cal. Const., art. XIII D, § 6.](#)) The Commission concluded that the owner protest procedure denied permittees sufficient authority to levy a fee for the street sweeping condition, and the condition was a reimbursable mandate.

After the Commission issued its decision, this court issued *Paradise Irrigation Dist.* and, as already explained, determined that article XIII D's owner protest procedure did not deprive local governments of authority to levy water service fees. (*Paradise Irrigation Dist., supra*, 33 Cal.App.5th at pp. 192-195, 244 Cal.Rptr.3d 769.) In its respondent's brief, the Commission now agrees with the State that, as a result of *Paradise Irrigation Dist.*, permittees have authority to levy fees for the street sweeping condition, and that the condition is not a reimbursable mandate. The fee is not subject to voter approval, and voter protest requirements applicable to refuse service fees do not deprive permittees of their authority to levy fees for that service.

Permittees disagree with the Commission's new position. They claim *Paradise Irrigation Dist.* does not affect the issue. [Public Resources Code section 40059](#) authorizes a fee for solid waste handling, but the street sweeping condition was imposed to prevent and abate pollution in waterways and on beaches, not to collect solid waste. The State and the Commission also have not established that street sweeping qualifies as solid waste handling under [Public Resources Code section 40059](#), or that a fee for such activity qualifies as "refuse collection" for purposes of article XIII D. In addition, the State has not established how a fee for street sweeping can satisfy article XIII D's substantive ****600** requirements which apply to all property-related fees.

Before reaching its original holding, the Commission concluded the street sweeping fees qualified as refuse collection fees for purposes of article XIII D's voter approval exemption. The Commission determined that permittees had authority to adopt street cleaning fees pursuant to their authority to adopt fees for solid waste handling. [Public Resources Code section 40059](#) grants ***582** local agencies the authority to

determine fees and charges for “solid waste handling.” (Pub. Resources Code, § 40059, subd. (a)(1).) “ ‘Solid waste handling’ ” means “the collection, transportation, storage, transfer, or processing of solid wastes.” (Pub. Resources Code, § 40195.) “ ‘Solid waste’ ” includes “all putrescible and nonputrescible solid, semisolid, and liquid wastes” including garbage, trash, refuse, paper, rubbish, ashes, and the like. (Pub. Resources Code, § 40191.) The Commission determined that “ ‘[g]iven the nature of material swept from city streets, street sweeping falls under the rubric of ‘solid waste handling,’ ” and permittees thus had authority to adopt fees for street sweeping.

Article XIII D exempts “refuse collection” fees from its voter approval requirement, but neither it nor the Implementation Act define “refuse collection.” The Commission determined the plain meaning of refuse collection is the same as solid waste handling. “Refuse is collected via solid waste handling.” As a result, the Commission concluded that street cleaning fees would qualify as refuse collection fees and were therefore expressly exempt from article XIII D’s voter approval requirement.

^{159]}Permittees assert that “no one” has demonstrated that a fee for street sweeping qualifies as refuse collection for purposes of article XIII D. Yet permittees offer no alternative to the Commission’s interpretation that street sweeping is waste handling, and that waste handling is refuse collecting. We independently review the Commission’s interpretation of the permit and statutory provisions. (*Los Angeles Mandates I, supra*, 1 Cal.5th at p. 762, 207 Cal.Rptr.3d 44, 378 P.3d 356.) Giving the language a plain and commonsense meaning as we are required to do (*City of San Jose, supra*, 2 Cal.5th at p. 616, 214 Cal.Rptr.3d 274, 389 P.3d 848), we agree with the Commission’s interpretation that street sweeping, as required by the permit, is refuse collecting for purposes of

article XIII D.

The permit requires each permittee to implement a program “to sweep improved (possessing a curb and gutter) municipal roads, streets, highways, and parking facilities.” Frequency depends on the volume of trash each street generates. Roads “consistently generating the highest volumes of trash and/or debris shall be swept at least two times per month.” Roads that generate “moderate” or “low” “volumes of trash and/or debris” are to be swept less frequently.

As part of their reporting responsibilities, permittees must annually identify the total distance of curb miles of roads identified “as consistently generating the highest volumes of trash and/or debris,” and also the curb miles of roads identified as “consistently generating moderate volumes of trash and/or debris” and “low volumes of trash and/or debris[.]” Additionally, permittees must annually report the “[a]mount of material (tons) collected from street and parking lot sweeping.”

583** It is obvious that the street sweeping condition expressly requires permittees to collect refuse. Refuse means “rubbish, trash, garbage.” (Merriam-Webster-Unabridged Dict. Online (2022) <<https://unabridged.merriam-webster.com/unabridged/refuse>, *601** par.3> [as of Aug. 25, 2022], archive at: <<https://perma.cc/YDN3-8T7W>>.) Permittees must collect and record the volumes of trash removed by street sweeping. Thus, a fee for collecting that refuse and charged pursuant to [Public Resources Code section 40059](#) would as a fee for refuse collection services be exempt from article XIII D’s voter approval requirement.

^{160]}Permittees claim the street sweeping requirement was not imposed to collect solid waste as contemplated by [Public Resources Code section 40059](#) but was intended to prevent or abate pollution. We rejected this type of

argument earlier when the State made it. Recall that for purposes of [Section 6](#), the State's purpose for imposing a mandate does not determine whether the mandate is a new program. Similarly, if street sweeping qualifies as waste handling for purposes of [Public Resources Code section 40059](#), then permittees have authority to levy a fee for it, regardless of why the state imposed the street sweeping condition.

Relying on *Los Angeles Mandates II, supra*, 59 Cal.App.5th at page 568, 273 Cal.Rptr.3d 619, permittees claim the State has the burden of proving their fee authority, and specifically that a fee for street sweeping would satisfy article XIII D's substantive requirements for property-related fees. Permittees assert the State has not met its burden. *Los Angeles Mandates II* is distinguishable. There, the court of appeal determined that an NPDES permit condition requiring the local governments to install and maintain trash receptacles at public transit stops owned by other public entities required subvention under [Section 6](#) because the local agencies did not have sufficient authority to levy fees for the requirement. (*Los Angeles Mandates II, at p. 561, 273 Cal.Rptr.3d 619.*) The local governments did not have authority to install equipment on another public entity's property and then charge that entity for installation and ongoing maintenance. (*Id. at pp. 565-567, 273 Cal.Rptr.3d 619.*)

The state in that case contended the local agencies could impose a fee on private property owners, and that such a fee would survive limitations imposed by article XIII D. Assuming for purposes of argument that the fee would overcome all of article XIII D's procedural hurdles, such as the owner protest and voter approval requirements, the court of appeal determined the state had not shown the fee would meet article XIII D's substantive requirements for property-related fees. (*Los Angeles Mandates II, supra, 59 Cal.App.5th at pp. 567-568, 273*

Cal.Rptr.3d 619.) The state did not cite to the record or to authority showing such a fee could satisfy the substantive requirements, and common sense dictated it could not. (*Id. at p. 568, 273 Cal.Rptr.3d 619.*)

584** Three of the substantive requirements permit a property-related fee only if the amount of the fee does not exceed the proportional cost of that attributable to the parcel, the fee is imposed for a service that is actually used by, or immediately available to, the owner of the property in question, and the fee is not imposed for general governmental services where the service was available to the public at large in substantially the same manner as it was to property owners. ([Cal. Const., art. XIII D, § 6, subd. \(b\)\(3\)-\(5\).](#)) The state could not satisfy the requirements because the vast majority of persons who would use trash receptacles at transit stops would be pedestrians, transit riders, and other members of the public, not the owners of adjacent properties. Any benefit to them would be incidental. Moreover, the placement of the receptacles at public transit stops *602** would make the service available to the public at large in the same manner as it would to property owners. (*Los Angeles Mandates II, supra, 59 Cal.App.5th at pp. 568-569, 273 Cal.Rptr.3d 619.*)

The state claimed two other statutes, including [Public Resources Code section 40059](#), gave the local agencies sufficient fee authority. The court of appeal did not dispute that the statutes authorized the agencies to impose fees, including waste management fees under [Public Resources Code section 40059](#), but the statutes did not exempt such fees from the constitutional requirements imposed by article XIII D. (*Los Angeles Mandates II, supra, 59 Cal.App.5th at pp. 569-570, 273 Cal.Rptr.3d 619.*)

^[61]There is no dispute that any fee permittees may charge for the street sweeping condition will

be subject to article XIII D's substantive requirements. Permittees, however, citing *Los Angeles Mandate II*, claim the State, as the party seeking to establish an exception to subvention under Section 6, has the burden at this stage to establish that any fee permittees may adopt will meet all of the substantive requirements, and the state has not met that burden. "Typically, the party claiming the applicability of an exception bears the burden of demonstrating that it applies." (*Los Angeles Mandates I, supra*, 1 Cal.5th at p. 769, 207 Cal.Rptr.3d 44, 378 P.3d 356.)

The State argues that this typical approach should not apply to the burden of showing fee authority under section 17556(d). It claims the inherent flexibility in permittees' police power means permittees may develop fees in any number of ways. Also, local governments like permittees have significantly more expertise and experience than the State agencies before us in designing, implementing, and defending local government fees. The State asserts that permittees' expertise means they should bear the burden on this point.

[62] [63] We agree the State has the burden of establishing that permittees have fee authority, but that burden does not require the State also to prove *585 permittees as a matter of law and fact are able to promulgate a fee that satisfies article XIII D's substantive requirements. The sole issue before us is whether permittees have "the authority, i.e., the right or power, to levy fees sufficient to cover the costs of the state-mandated program." (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, 69 Cal.Rptr.2d 231.) The inquiry is an issue of law, not a question of fact. (*Ibid.*)

"The lay meaning of 'authority' includes 'the power or right to give commands [or] take action' (Webster's New World Dictionary (3d college ed.1988) p. 92.) Thus, when we commonly ask whether a police officer has the

'authority' to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter. [¶] Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." (*Connell v. Superior Court, supra*, 59 Cal.App.4th at p. 401, 69 Cal.Rptr.2d 231.)

[64] The State has established that permittees have the right or power to levy a fee for the street cleaning condition pursuant to Public Resources Code section 40059. Implicit in that determination is that permittees have the right or power to levy a fee that complies with article XIII D's substantive requirements. Unless it can be shown on undisputed facts in the record or as a matter of law that a fee cannot satisfy article XIII D's substantive requirements, as was found in **603 *Los Angeles Mandates II*, the establishment by the State of the local agencies' power or authority to levy a fee without voter approval or without being subject to other limitations establishes that a local government has sufficient fee authority for purposes of section 17556(d).

Although the court of appeal in *Los Angeles Mandates II* stated the state bore the burden to show that a fee for public trash receptacles could satisfy the substantive requirements, and that the state did not satisfy its burden, the court actually ruled that the local governments could not establish a fee that could meet the substantive requirements as a matter of law or undisputed fact. (*Los Angeles Mandates II, supra*, 59 Cal.App.5th at pp. 568-569, 273 Cal.Rptr.3d 619 ["common sense dictates" that fee would not meet requirements].) To require the State to show affirmatively how permittees can create a fee that meets the substantive requirements where no fee yet exists requires the State effectively to engage in the rulemaking process itself. That asks the

State to do more than establish permittees have the lawful authority to enact a fee, which is the sole issue. To the extent *Los Angeles Mandates II* requires the State to prove more, we respectively disagree with its interpretation.

Here, the State has established that permittees have sufficient fee authority to levy a fee for the street sweeping condition. As a result, the ***586** condition does not trigger subvention under **Section 6**. We will reverse the trial court's contrary holding on this issue.

IV.

Permittees' Cross-Appeal

A. Background

Permittees' cross appeal challenges the Commission's decision that permittees have sufficient authority to levy fees to recover the costs for two of the challenged conditions: the development and implementation of a hydromodification management plan (HMP) and low impact development (LID) requirements, both for use on "priority development projects."

Under the permit, priority development projects in general are certain new developments that increase pollutants in stormwater and in discharges from MS4s. These include certain residential, commercial, and industrial uses along with parking lots and roads that add impervious surfaces or are built on hillsides or in environmentally sensitive areas.

The permit requires permittees to develop and implement an HMP to mitigate increases in runoff discharge rates and durations from priority development projects. Hydromodification refers to the change in natural hydrologic processes and runoff characteristics caused by urbanization or other land use changes that result in increased stream flows and sediment transport. The plan would apply where increased runoff rates and

durations from priority development projects would likely cause increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat.

LID requirements are stormwater management and land development strategies to minimize directly-connected impervious areas and promote ground infiltration at priority development projects. They emphasize conservation and the use of on-site natural features, integrated with engineered, small-scale hydrologic controls to reflect pre-development hydrologic functions more closely. The permit requires permittees to add LID requirements to their local Standard Urban Storm Water Mitigation Plans.

****604** The Commission determined that permittees had authority to levy fees to recover the costs of developing and implementing the HMP and the LID requirements because fees for those actions would not require voter approval under article XIII D. The purpose of the two conditions "is to prevent or abate pollution in waterways and beaches in San Diego County." Permittees ***587** have authority to impose the fees for this purpose under their police power, and article XIII D does not apply to fees imposed under the police power as a condition of property development or as a result of a property owner's voluntary decision to seek a government benefit. Additionally, the Mitigation Fee Act (*Gov. Code, § 66000, et seq.*) grants permittees statutory authority to impose development fees to recover the costs for complying with the HMP and LID conditions which, again, are exempt from article XIII D. Because permittees had the authority to levy fees to recover the costs of the HMP and LID conditions without having to obtain voter approval, the Commission concluded the conditions were not reimbursable mandates under **Section 6**.

The trial court upheld the Commission's determinations on the same grounds.

B. Analysis

Permittees contend the Commission and the trial court erred. They do not dispute that they may enact regulatory fees pursuant to their police power. They focus their argument on recovering only the costs of creating the HMP and the LID requirements, and they claim that fees to recover those costs cannot meet the "substantive requirements" to be exempt from the voter approval requirements found in [section 6 of article XIII D](#) or [article XIII C, section 1, subdivision \(e\)\(2\) of the state constitution](#). They also contend that fees to recover those costs cannot satisfy the substantive requirements of the Mitigation Fee Act.

^[65] ^[66] Before addressing permittees' authority to levy a fee for the HMP and LID conditions, we refute an assumption underlying their argument. [Section 6 of article XIII D](#) and its voter approval requirements do not apply in this instance. The Commission found that permittees had authority to recover the costs of preparing the HMP and the LID requirements by imposing a fee as a condition for approving new priority development projects. [Article XIII D](#) does not apply to fees imposed on real property development. ([Cal. Const., art. XIII D, § 1.](#)) [Article XIII D](#) also does not apply to fees imposed on property owners for their voluntary decision to apply for a government benefit. ([Richmond v. Shasta Community Services Dist., supra](#), 32 Cal.4th at pp. 425-428, 9 Cal.Rptr.3d 121, 83 P.3d 518.) The proposed fee at issue here would be imposed as a condition for approving new real property development and based on the developer's application for government approval to proceed with the development. [Article XIII D](#) does not apply in this circumstance.

^[67] Also, at the time the Commission issued its decision, the state constitution did not expressly

define taxes and fees or their differences. In November 2010, shortly after the Commission issued its decision, voters ***588** approved Proposition 26, which amended [section 1 of article XIII C](#) by adding subdivision (e), the provision cited by permittees. (Prop. 26, Cal. Const., art. § 3, approved by voters, Gen. Elec. (Nov. 2, 2010), eff. (Nov. 3, 2010).) Proposition 26 defined a local tax subject to voter approval as "any levy, charge, or exaction of any kind imposed by a local government" except for certain enumerated charges and fees. ([Cal. Const., art. XIII C, §§ 1, subd. \(e\), 2.](#)) Proposition 26 is not ****605** retroactive, and thus its definitions of a tax and fee do not apply to the Commission's decision. ([Brooktrails Township Community Services Dist. v. Board of Supervisors](#) (2013) 218 Cal.App.4th 195, 205-207, 159 Cal.Rptr.3d 424.) However, Proposition 26 codified much, but not all, of the relevant case authority that existed at the time of the measure's enactment regarding the requirements for a valid fee. ([City of San Buenaventura v. United Water Conservation Dist.](#) (2017) 3 Cal.5th 1191, 1210, 226 Cal.Rptr.3d 51, 406 P.3d 733.) In determining whether permittees can levy a fee or whether a fee they enact would be valid, we will restrict ourselves to authority and rules established before Proposition 26 was adopted or which the measure codified.

^[68] In general, all taxes imposed by local governments must be approved by the voters, but development fees and regulatory fees that meet certain requirements are not required to be approved by the voters. ([Cal. Const., arts. XIII C, § 2; XIII D, § 1, subd. \(b\); Sinclair Paint Co. v. State Bd. of Equalization](#) (1997) 15 Cal.4th 866, 875-876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) A levy qualifies as a regulatory fee if "(1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens

created by the fee payers' activities or operations. ([*Sinclair Paint Co. v. State Bd. of Equalization*, *supra*, 15 Cal.4th at p. 881, 64 Cal.Rptr.2d 447, 937 P.2d 1350].) If those conditions are not met, the levy is a tax." (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046, 232 Cal.Rptr.3d 64, 416 P.3d 53.)

These are the substantive requirements that permittees claim a fee for the HMP and LID conditions cannot satisfy. Specifically, they claim that a fee to recover the cost of creating the HMP and the LID requirements cannot meet the first and third required elements of a valid regulatory fee. They assert that any fee revenue they collected from developers of priority development projects would exceed the cost of creating the HMP and the LID requirements. They incurred \$1.1 million in drafting the plans, and the plans were drafted before any development projects could be charged a fee. They argue that if they collected fees from all applicable developers, eventually the fees collected would exceed the \$1.1 million cost to write the plans. If they stopped charging fees after collecting \$1.1 million, developers who paid the fee would have paid more than they should for their benefit or burden.

***589** Permittees also claim that the amount of a fee for recovering the costs of creating the HMP and the LID requirements would not have a fair or reasonable relationship to the burdens created by future developers' activities or operations. Permittees assert they lack any means of reasonably allocating the costs of creating the HMP and the LID requirements among particular development projects and their proponents. Case authority requires the fee to be based on a project's contribution to the impact being addressed, but permittees assert they cannot monitor pollutants from all future development projects to establish an emissions-based formula for allocating the fee. (See *San Diego Gas &*

Electric Co. v. San Diego County Air Pollution Control Dist. (1988) 203 Cal.App.3d 1132, 1146, 250 Cal.Rptr. 420 (*San Diego Gas*.) Permittees argue that case authority also prevents them from allocating a fee based on the physical characteristics of individual properties. (See *City of Salinas*, *supra*, 98 Cal.App.4th at p. 1355, 121 Cal.Rptr.2d 228.)

****606** ^[69]Whether a levy constitutes a fee or tax is a question of law determined upon an independent review of the record. (*California Building Industry Assn. v. State Water Resources Control Bd.*, *supra*, 4 Cal.5th at p. 1046, 232 Cal.Rptr.3d 64, 416 P.3d 53.) Here, of course, there is no adopted fee to which we could apply the substantive requirements. And permittees direct us to no evidence in the record supporting their claim that, in effect, it is factually and legally impossible for them to adopt a valid regulatory fee to recover the cost of creating the HMP and the LID requirements.

As with the street sweeping condition, the sole issue before us is whether permittees have the authority, i.e., "the right or power, to levy fees sufficient to cover the costs." (*Connell v. Superior Court*, *supra*, 59 Cal.App.4th at p. 401, 69 Cal.Rptr.2d 231.) There is no dispute that permittees' police power vests them with the legal authority to levy fees that will satisfy the substantive requirements to avoid being considered as taxes. That fact ends our analysis unless permittees can establish they cannot levy a regulatory or development fee as a matter of law.

^[70]There is no evidence in the record that permittees cannot levy a fee in an amount that will not exceed their costs for creating the HMP and the LID requirements. "The scope of a regulatory fee is somewhat flexible and is related to the overall purposes of the regulatory governmental action. ' "A regulatory fee may be imposed under the police power when the fee

constitutes an amount necessary to carry out the purposes and provisions of the regulation.” [Citation.] “Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement.” [Citation.] Regulatory fees are valid despite the absence of any perceived “benefit” accruing to the fee payers. [Citation.] Legislators “need only apply sound judgment and *590 consider ‘probabilities according to the best honest viewpoint of informed officials’ in determining the amount of the regulatory fee.” [Citation.]’ ([*California Assn. of Prof. Scientists v. Department of Fish & Game* (2000)] 79 Cal.App.4th [935,] 945 [94 Cal.Rptr.2d 535] ([*Prof. Scientists*]).) ‘Simply because a fee exceeds the reasonable cost of providing the service or regulatory activity for which it is charged does not transform it into a tax.’ (*Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 700 [37 Cal.Rptr.3d 149, 124 P.3d 719].)” (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438, 121 Cal.Rptr.3d 37, 247 P.3d 112.)

Creating the HMP and the LID requirements constitute costs incident to the development permit which permittees will issue to priority development projects and the administration of permittees’ pollution abatement program. Setting the fee will not require mathematical precision. Permittees’ legislative bodies need only “consider ‘probabilities according to the best honest viewpoint of [their] informed officials’ ” to set the amount of the fee. (*California Farm Bureau Federation v. State Water Resources Control Bd.*, *supra*, 51 Cal.4th at p. 438, 121 Cal.Rptr.3d 37, 247 P.3d 112.) “No one is suggesting [permittees] levy fees that exceed their costs.” (*Connell v. Superior Court*, *supra*, 59 Cal.App.4th at p. 402, 69 Cal.Rptr.2d 231.)

[71] [72] [73] [74] [75] There is also no evidence in the

record indicating permittees cannot levy a fee that will bear a reasonable relationship to the burdens created by future priority development. “A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors. (**607 *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 194 [29 Cal.Rptr.2d 128].) The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors. (*Prof. Scientists*, *supra*, 79 Cal.App.4th at p. 948 [94 Cal.Rptr.2d 535].) ¶ Thus, permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual fee payor might derive [or the precise burden each payer may create]. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.” (*California Farm Bureau Federation v. State Water Resources Control Bd.*, *supra*, 51 Cal.4th at p. 438, 121 Cal.Rptr.3d 37, 247 P.3d 112.) Again, no one is suggesting permittees levy a fee to generate general revenue.

Permittees cite to *San Diego Gas*, *supra*, 203 Cal.App.3d at pages 1145-1149, 250 Cal.Rptr. 420, and *City of Salinas*, *supra*, 98 Cal.App.4th at page 1355, 121 Cal.Rptr.2d 228, to claim they lack any means of fairly or reasonably allocating the costs of creating the HMP and the LID requirements among priority development project proponents. Those cases, however, concern only the facts before them *591 and do not establish that permittees as a matter of law cannot enact a fee that meets the substantive requirements for regulatory fees.

In *San Diego Gas*, the court of appeal upheld an air pollution control district’s imposition of a regulatory fee to cover the administrative cost of its permit program for industrial polluters. The

fee was apportioned based on the amount of emissions discharged by a stationary pollution source. The record showed that the allocation of costs based on emissions fairly related to the permit holder's burden on the district's programs. (*San Diego Gas, supra*, 203 Cal.App.3d at p. 1146, 250 Cal.Rptr. 420.) The district's determination that a fee based on the labor costs incurred in the permit program would result in small polluters paying fees greater than their proportionate share of pollution reasonably justified using the emissions-based fee schedule to divide the costs more equitably. (*Id.* at pp. 1146-1147, 250 Cal.Rptr. 420.)

Permittees contend that, similar to the labor-based fee in *San Diego Gas* that was not imposed, allocating the costs of preparing the HMP and the LID requirements pursuant to a formula unrelated to an individual project's contribution to pollution would not provide a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. However, *San Diego Gas* does not stand for the proposition that an emissions-based, or discharge-based fee requiring direct monitoring is the only lawful fee for funding a pollution mitigation program. The case is limited to its facts, and the court in that case determined that the emissions-based fee before it met the substantive requirements for regulatory fees.

[76] [77]The substantive test is “a flexible assessment of proportionality within a broad range of reasonableness in setting fees.” (*Prof. Scientists, supra*, 79 Cal.App.4th at p. 949, 94 Cal.Rptr.2d 535.) This flexibility would be particularly appropriate where an obvious or accepted method such as an emissions-based fee is impractical. Indeed, “[r]egulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost.” (*Id.* at p. 950, 94 Cal.Rptr.2d 535.) In those cases, even a flat-fee system may be a reasonable means of allocating costs. (*Id.* at pp. 939, 950-955, 94

Cal.Rptr.2d 535 [flat fee schedule to defray **608 costs of performing environmental review was valid regulatory fee as long as the cumulative amount of the fee did not surpass the cost of the regulatory service and the record discloses a reasonable basis to justify distributing the cost among payors].) Permittees have not shown they cannot meet this flexible test.

Relying on *City of Salinas*, permittees also claim that charges based on the physical characteristics of a property, such as the amount of impervious surface area as a proxy for actual discharges, are not proportional to the amount of services requested or used and thus must be approved by the *592 voters. (*City of Salinas, supra*, 98 Cal.App.4th at p. 1355, 121 Cal.Rptr.2d 228.) Permittees misread the court's statement. The particular issue in *City of Salinas* was whether a fee charged by a city on all developed parcels to finance improvements to storm and surface water facilities was a property-related fee subject to article XIII D's voter approval requirements or a user fee comparable to the metered use of water or the operation of a business. The fee was calculated according to the degree to which the property contributed runoff to the city's drainage facilities, and a property's contribution was to be measured by the amount of “impervious area” on the parcel. (*City of Salinas, at p. 1353, 121 Cal.Rptr.2d 228.*)

The city had argued the fee was a user fee because a property owner could theoretically opt out of paying it by maintaining its own stormwater management facility on the property. The court disagreed, finding the fee was applicable to each developed parcel in the city. (*City of Salinas, supra*, 98 Cal.App.4th at pp. 1354-1355, 121 Cal.Rptr.2d 228.) One indicator the fee was not a user fee was the fact that any reduction in the fee based on lack of contribution of water was “not proportional to the amount of services requested or used by the occupant but on the physical properties of the parcel.” (*Id.* at p.

1355, 121 Cal.Rptr.2d 228.) The statement concerned the limited issue of whether the fee was a user fee. Contrary to permittees' interpretation, the court of appeal's statement does not mean that charges based on a property's physical characteristics, such as the amount of impervious surface area as a proxy for actual discharges, are as a matter of law not proportional to the amount or level of services provided and must be approved by voters as a tax.

Permittees also raise an argument based on Proposition 26. They assert they cannot legally levy a fee to recover the cost of preparing the HMP and LID conditions because those planning actions benefit the public at large, citing *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451, 197 Cal.Rptr.3d 429 (*Newhall*). Permittees misapply *Newhall*. *Newhall* concerned rates that a public water wholesaler of imported water charged to four public retail water purveyors. Part of the wholesaler's rates consisted of a fixed charge based on each retailer's rolling average of demand for the wholesaler's imported water and for groundwater which was not supplied by the wholesaler. Although the wholesaler was required to manage groundwater supplies in the basin, it did not sell groundwater to the retailers. (*Id.* at pp. 1434-1440, 197 Cal.Rptr.3d 429.)

The court of appeal determined the rates did not qualify as fees under Proposition 26. Proposition 26 states a levy is not a tax where, among other uses, it is imposed "for a specific government service provided directly to the payor that is not provided to those not charged" (Cal. Const., art. XIII C, § 1, subd. (e)(2).) The only specific government service *593 the wholesaler provided to the retailers was imported water. It did not provide groundwater, **609 and the groundwater management activities it provided were not services provided just to the retailers. Instead, those activities "redound[ed] to the benefit of all groundwater extractors in the

Basin[.]" (*Newhall, supra*, 243 Cal.App.4th at p. 1451, 197 Cal.Rptr.3d 429.) The wholesaler could not base its fee and allocate its costs based on groundwater use because the wholesaler's groundwater management activities were provided to those who were not charged with the fee. (*Ibid.*; see also *Los Angeles Mandates II, supra*, 59 Cal.App.5th at p. 569, 273 Cal.Rptr.3d 619 [article XIII D prohibits MS4 permittees from charging property owners for the cost of providing trash receptacles at public transit locations in part because service was made available to the public at large].)

Permittees argue that, as in *Newhall*, the costs of preparing the HMP and the LID requirements are part of their stormwater management programs. Although only proponents of priority development projects will be required to comply with the plans, the plans will "redound to the benefit of all" property owners, residents, and visitors in the region by improving water quality. Thus, a charge to recover the costs of creating the plan would not qualify as a fee and would be subject to voter approval, and as a result, permittees do not have authority to levy a fee for that purpose.

Assuming only for purposes of argument that Proposition 26 applies here, we disagree with permittees. Article XIII C, section 1, subdivision (e) defines a local tax subject to voter approval as "any levy, charge, or exaction of any kind imposed by a local government," with the express exception of seven different types of charges. Satisfying any one of those exceptions removes the charge from being a tax. The proposed fee permittees may impose satisfies two of those exceptions: a charge imposed for the reasonable regulatory cost to a local government for issuing permits, and a charge imposed as a condition of property development. (Cal. Const., art. XIII C, § 1, subd. (e)(3), (6).)

[78]Under the exception at issue in

charge is not a tax if it is “imposed for a specific government service or product provided directly to the payor that is not provided to those not charged” (Cal. Const., art. XIII C, § 1, subd. (e)(2).) The focus is on a service or product “provided directly” to the payor that is not provided to those not charged. Here, the service provided directly to developers of priority development projects is the preparation, implementation, and approval of water pollution mitigations applicable only to their projects. Unlike in *Newhall*, that service is not provided to anyone else, and only affected priority project developers will be charged for the service. The service will not be provided to those not charged. To interpret the provision as permittees do, that the exception from being a tax excludes fees *594 for services that ultimately but not directly redound to the public benefit,—which is not what *Newhall* held—is contrary to the statutory exception’s express wording.

Separately, the County of San Diego raises another argument. It notes that under existing law, if a local agency has some fee authority, but not sufficient fee authority to cover the entire cost of a mandated activity, the mandate is reimbursable under Section 6 to the extent the cost cannot be recovered through fees. (See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, 116 Cal.Rptr.3d 33 (*Clovis Unified*).) The County contends the same principle should be true if a local agency only has fee authority contingent on the actions of third parties, in this case the prospective developers, whom the County and permittees do not control. **610 Such a “contingent” mandate, so labeled by the County, is not “sufficient to pay for” the mandate, as required by section 17556(d), and should be deemed a reimbursable mandate.

^{179]}The County misunderstands the principle. The County describes a situation where whether it collects revenue from the fee is contingent not on its legal authority to levy a fee, but on developers

seeking permits for priority development projects. The latter is not relevant to our analysis. The authority the County cites, *Clovis Unified*, acknowledges this distinction and undercuts the County’s argument. In *Clovis Unified*, community college districts who provided health care services were mandated to provide those services in the future at the level of care they had provided in the 1986-1987 fiscal year. The districts were required to maintain this level of care even if, as they were permitted to do, they eliminated a student health fee they were authorized by statute to charge. Auditing the districts’ approved claims for reimbursement under Section 6, the state controller determined the districts would be reimbursed for their health service costs at the level of service they provided in 1986-87 subject to a reduction by the amount of student fees the districts were statutorily authorized to charge, even if the districts chose not to charge the fee. (*Clovis Unified, supra*, 188 Cal.App.4th at pp. 810-811, 116 Cal.Rptr.3d 33.)

^{180]}A panel of this court upheld the controller’s auditing rule as consistent with section 17556(d). We stated that section 17556(d)’s fee authority exception to Section 6’s subvention requirement embodied a basic principle underlying the state mandate process: “To the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.” (*Clovis Unified, supra*, 188 Cal.App.4th at p. 812, 116 Cal.Rptr.3d 33, fn. omitted.) In other words, the issue turns on the local agency’s authority to levy a fee, not on whether the agency actually imposed the fee.

*595 This holding does not support the County’s argument. The issue raised by the County is not that permittees do not have fee authority. It is that after they exercise that authority and enact a fee, the fee may not be paid if no developers apply for permits. The County’s authority to levy a fee is not contingent on future developers, only the

actual collection of the fee is contingent. The authority to levy the fee is derived from police power, and nothing in the County’s argument, or permittees’ arguments, indicates permittees do not have the authority to levy fees for the HMP and the LID requirements.

Disposition

We reverse the judgment only to the extent it holds that the street sweeping condition is a reimbursable mandate under [Section 6](#). In all other respects, the judgment is affirmed. Each party shall bear its own costs. (Cal. Rules of Court, rule 8.278(a)(5).)

Footnotes

- ¹ The permittees are the County of San Diego and the Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.
- ² [Section 53751](#) reads in full: “The Legislature finds and declares all of the following:
 - “(a) The ongoing, historic drought has made clear that California must invest in a 21st century water management system capable of effectively meeting the economic, social, and environmental needs of the state.
 - “(b) Sufficient and reliable funding to pay for local water projects is necessary to improve the state’s water infrastructure.
 - “(c) Proposition 218 was approved by the voters at the November 5, 1996, statewide general election. Some court interpretations of the law have constrained important tools that local governments need to manage storm water and drainage runoff.
 - “(d) Storm waters are carried off in storm sewers, and careful management is necessary to ensure adequate state water supplies, especially during drought, and to reduce pollution. But a court decision has found storm water subject to the voter-approval provisions of Proposition 218 that apply to property-related fees, preventing many important projects from being built.
 - “(e) The court of appeal in [*City of Salinas, supra*,] 98 Cal.App.4th 1351 [121 Cal.Rptr.2d 228] concluded that the term ‘sewer,’ as used in Proposition 218, is ‘ambiguous’ and declined to use the statutory definition of the term ‘sewer system,’ which was part of the then-existing law as [Section 230.5 of the Public Utilities Code](#).
 - “(f) The court in [*City of Salinas, supra*,] 98 Cal.App.4th 1351 [121 Cal.Rptr.2d 228] failed to follow long-standing principles of statutory construction by disregarding the plain meaning of the term ‘sewer.’ Courts have long held that statutory construction rules apply to initiative measures, including in cases that apply specifically to Proposition 218 (see *People v. Bustamante* (1997) 57

We concur:

[MAURO, J.](#)

[DUARTE, J.](#)

All Citations

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Cal.App.4th 693 [67 Cal.Rptr.2d 295]; *Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006 [96 Cal.Rptr.2d 246]). When construing statutes, courts look first to the words of the statute, which should be given their usual, ordinary, and commonsense meaning (*People v. Mejia* (2012) 211 Cal.App.4th 586, 611 [149 Cal.Rptr.3d 815]). The purpose of utilizing the plain meaning of statutory language is to spare the courts the necessity of trying to divine the voters' intent by resorting to secondary or subjective indicators. The court in [*City of Salinas, supra,*] 98 Cal.App.4th 1351 [121 Cal.Rptr.2d 228] asserted its belief as to what most voters thought when voting for Proposition 218, but did not cite the voter pamphlet or other accepted sources for determining legislative intent. Instead, the court substituted its own judgment for the judgment of voters.

“(g) Neither the words ‘sanitary’ nor ‘sewerage’ are used in Proposition 218, and the common meaning of the term ‘sewer services’ is not ‘sanitary sewerage.’ In fact, the phrase ‘sanitary sewerage’ is uncommon.

“(h) Proposition 218 exempts sewer and water services from the voter-approval requirement. Sewer and water services are commonly considered to have a broad reach, encompassing the provision of clean water and then addressing the conveyance and treatment of dirty water, whether that water is rendered unclean by coming into contact with sewage or by flowing over the built-out human environment and becoming urban runoff.

“(i) Numerous sources predating Proposition 218 reject the notion that the term ‘sewer’ applies only to sanitary sewers and sanitary sewerage, including, but not limited to:

“(1) Section 230.5 of the Public Utilities Code, added by Chapter 1109 of the Statutes of 1970.

“(2) Section 23010.3, added by Chapter 1193 of the Statutes of 1963.

“(3) The Street Improvement Act of 1913.

“(4) *L.A. County Flood Control Dist. v. Southern Cal. Edison Co.* (1958) 51 Cal.2d 331 [333 P.2d 1], where the California Supreme Court stated that ‘no distinction has been made between sanitary sewers and storm drains or sewers.’

“(5) Many other cases where the term ‘sewer’ has been used interchangeably to refer to both sanitary and storm sewers include, but are not limited to, *County of Riverside v. Whitlock* (1972) 22 Cal.App.3d 863 [99 Cal.Rptr. 710], *Ramseier v. Oakley Sanitary Dist.* (1961) 197 Cal.App.2d 722 [17 Cal.Rptr. 464], and *Torson v. Fleming* (1928) 91 Cal.App. 168 [266 P. 845].

“(6) Dictionary definitions of sewer, which courts have found to be an objective source for determining common or ordinary meaning, including Webster’s (1976), American Heritage (1969), and Oxford English Dictionary (1971).

“(j) Prior legislation has affirmed particular interpretations of words in Proposition 218, specifically Assembly Bill 2403 of the 2013-14 Regular Session (Chapter 78 of the Statutes of 2014).

“(k) In *Crawley v. Alameda Waste Management Authority* (2015) 243 Cal.App.4th 396 [196

Cal.Rptr.3d 365], the Court of Appeal relied on the statutory definition of ‘refuse collection services’ to interpret the meaning of that phrase in Proposition 218, and found that this interpretation was further supported by the plain meaning of refuse. Consistent with this decision, in determining the definition of ‘sewer,’ the plain meaning rule shall apply in conjunction with the definitions of terms as provided in [Section 53750](#).

“(l) The Legislature reaffirms and reiterates that the definition found in [Section 230.5 of the Public Utilities Code](#) is the definition of ‘sewer’ or ‘sewer service’ that should be used in the Proposition 218 Omnibus Implementation Act.

“(m) Courts have read the Legislature’s definition of ‘water’ in the Proposition 218 Omnibus Implementation Act to include related services. In *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586 [163 Cal.Rptr.3d 243], the Court of Appeal concurred with the Legislature’s view that ‘water service means more than just supplying water,’ based upon the definition of water provided by the Proposition 218 Omnibus Implementation Act, and found that actions necessary to provide water can be funded through fees for water service. Consistent with this decision, ‘sewer’ should be interpreted to include services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters, and any entity that collects, treats, or disposes of any of these necessarily provides sewer service.”