

**COMMISSION ON STATE MANDATES**

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May 13, 2015

Ms. Evelyn Sues  
Department of Finance  
Local Government Unit  
915 L Street  
Sacramento, CA 95814

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

**Re: Proposed Decision**

Mandate Redetermination Request, 14-MR-02

*California Public Records Act (02-TC-10 and 02-TC-51)*

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

Dear Ms. Sues:

The proposed decision for the first hearing on the above-named matter is enclosed.

**Hearing**

This matter is set for hearing on **Friday May 29, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

**Special Accommodations**

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

Sincerely,

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

Heather Halsey  
Executive Director

**ITEM 3**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**PROPOSED DECISION**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);  
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decision, 02-TC-10 and 02-TC-51, approving reimbursement for activities related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.

The mandate redetermination request in this matter is based upon changes in law made by Proposition 42. On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”<sup>1</sup> The proposition amended section 6(a) of article XIII B of the California Constitution, adding paragraph 4, to provide “that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”<sup>2</sup>

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a

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<sup>1</sup> Exhibit G, Text of Ballot Measure, Proposition 42, at p. 42.

<sup>2</sup> Exhibit G, Text of Ballot Measure, Proposition 42, at p. 43.

successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.<sup>3</sup>

### **Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the *CPRA* test claim, 02-TC-10 and 02-TC-51.<sup>4</sup> Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.”<sup>5</sup> On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision. On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing on the request.<sup>6</sup> On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.<sup>7</sup>

### **Commission Responsibilities**

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

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

The regulations further state:

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

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<sup>3</sup> Article I, section 3(b), paragraph 7 (added June 3, 2014).

<sup>4</sup> Exhibit A, Request for Redetermination, at p. 1.

<sup>5</sup> Based on the January 21, 2015 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2014.

<sup>6</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>7</sup> Exhibit F, Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

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

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

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

### **Staff Analysis**

Staff finds that Finance has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *CPRA* mandate may be modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within Chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if the State's liability has been modified thus requiring that a new test claim decision be adopted to supersede the previously adopted test claim decision.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the request for a second hearing to determine whether the state's liability has been modified and if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for July 24, 2015.

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

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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

Government Code Sections 6253, 6253.1,  
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);  
Statutes 2000, Chapter 982 (AB 2799); and  
Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:

Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By the Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10  
and 02-TC-51)*

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

*(Adopted May 29, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on May 29, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1190 et seq., and related case law.

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

**Summary of Findings**

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *California Public Records Act (CPRA)*, 02-TC-10 and 02-TC-51 mandate may be modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under

Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within Chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if the state's liability has been modified and whether a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

## COMMISSION FINDINGS

### I. Chronology

- 5/26/2011 The Commission adopted the test claim statement of decision.<sup>10</sup>
- 4/19/2013 The Commission adopted the parameters and guidelines.<sup>11</sup>
- 6/3/2014 The voters adopted Proposition 42, which added article I, section 3(b), paragraph 7 and article XIII B, section 6, paragraph 4 to the California Constitution.<sup>12</sup>
- 1/21/2015 Finance filed a request for redetermination on *California Public Records Act*, 02-TC-10 and 02-TC-51.<sup>13</sup>
- 2/17/2015 The State Controller's Office (Controller) submitted written comments on the redetermination request.<sup>14</sup>
- 4/3/2015 Commission staff issued the draft proposed decision for the first hearing on the request.<sup>15</sup>
- 4/23/2015 The Controller filed comments on the draft proposed decision.<sup>16</sup>

### II. Background

#### The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify

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<sup>10</sup> Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

<sup>11</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

<sup>12</sup> Exhibit G, Text of Ballot Measure, Proposition 42, at p. 2.

<sup>13</sup> Exhibit A, Request for Redetermination.

<sup>14</sup> Exhibit D, Controller's Comments on Request for Redetermination filed February 17, 2015.

<sup>15</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>16</sup> Exhibit F, Controller's Comments on Draft Proposed Decision filed April 23, 2015.

records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.<sup>17</sup>

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

**B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

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<sup>17</sup> See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
  - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
- 3) Sending or transmitting the notice to the requestor.

- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
- 3) Sending or transmitting the notice to the requestor.

- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.



Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
  - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment

Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

### The Alleged Subsequent Change in Law

Proposition 42, adopted by the voters on June 3, 2014, added paragraph 4 to article XIII B, section 6 which states that “. . . the Legislature may, but need not provide subvention for . . . Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3(b) of Article I.”

Additionally, Proposition 42 added article I, section 3(b), paragraph 7 to the California Constitution which provides:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”<sup>18</sup>

A subsequent change in law is defined in section 17570 as follows:

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<sup>18</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

[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.<sup>19</sup>

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>20</sup>

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>21</sup>

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

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

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.<sup>22</sup>

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

The Controller states that it “concur[s] with the Department of Finance’s request to adopt a new test claim decision” for the California Public Records Act test claim since Proposition 42 “requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials.”<sup>23</sup>

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<sup>19</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>20</sup> California Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>21</sup> California Code of Regulations, Title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>22</sup> Exhibit A, Request for Redetermination, at p. 1.

<sup>23</sup> Exhibit D, Controller’s Comments on Request for Redetermination filed February 17, 2015.

#### **IV. Discussion**

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

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission's regulations, only whether the requester has made an adequate showing that the state's liability may be modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether the request, when considered in light of all of the written comments and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing."<sup>24</sup> A thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

##### **A. Proposition 42 Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.**

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes "amendments to Section 6 of article XIII B of the California Constitution."<sup>25</sup> Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

"Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

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<sup>24</sup> Code of Regulations, Title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

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

<sup>25</sup> Government Code section 17570(a)(1).

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6. Article XIII B, section 6(a) paragraph 4, in turn, references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

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

At this hearing the Commission is required to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>26</sup> If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.<sup>27</sup>

Since all of the code sections found to impose mandated activities in *CPRA*, 02-TC-10 and 02-TC-51 are within Chapter 3.5, with which local governments are required to comply pursuant to Article I, section 3(b), paragraph 7, and which is exempted from the subvention requirement by the plain language of XIII B section 6(a) paragraph 4, the Commission finds that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

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<sup>26</sup> Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

<sup>27</sup> Government Code section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

## **V. Conclusion**

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission's previously adopted test claim decision on *CPRA*, 02-TC-10 and 02-TC-51.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On May 13, 2015, I served the:

**Proposed Decision**

Mandate Redetermination Request, 14-MR-02

*California Public Records Act (02-TC-10 and 02-TC-51)*

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 13, 2015 at Sacramento, California.



Imran Majid

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/12/15

**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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