ITEM 5

PROPOSED ORDERS TO SET ASIDE STATEMENTS OF DECISION ON RECONSIDERATION AND ORDERS TO SET ASIDE

PROPOSED ORDERS TO REINSTATE ORIGINAL STATEMENTS OF DECISION AND PARAMETERS AND GUIDELINES

Pursuant to *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183; Judgment and Peremptory Writ of Mandate Issued by Sacramento County Superior Court, Case No. 06CS01335

FINAL STAFF ANALYSIS

Open Meetings Act and Brown Act Reform, CSM 4257, 4469, 04-PGA-33
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7 As Amended By Statutes 1986, Chapter 641, and Statutes 1993, Chapters 1136, 1137, 1138

School Accountability Report Cards, 04-RL-9721-11, 05-RL-9721-03 (97-TC-21)
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 912 and 918;

Mandate Reimbursement Process, 05-RL-4204-02 (CSM 4204 & 4485)
Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459

Mandate Reimbursement Process II, 05-TC-05
Statutes 2004, Chapter 890 (AB 2856); Government Code Sections 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005)

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Statutes 2004, Chapter 890 (AB 2856); Government Code Sections 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005)

Executive Summary

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission as follows:

THEREFORE, you are commanded to:

1. Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

2. Set aside as null and void the Statements of Decisions on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Cards*), on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

3. Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (*Mandate Reimbursement Process*) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

4. Set aside as null and void the Statement of Decision adopted October 4, 2006 in Proceeding 05-TC-05 (*Mandate Reimbursement Process II*) in its entirety; you are further directed to hold new proceedings in that matter which are consistent with the ruling of this court, and which do not take into consideration any legislative determinations which refer to duties imposed which are "reasonably within the scope of ... a ballot measure" contained in Government Code section 17556, subdivision (f), as amended by section 7, Statutes 2005, chapter 72 (AB 138).

The proposed orders and draft staff analysis were issued for comment on August 17, 2009. No comments were received. Therefore, this item is placed on the Commission's consent calendar.

Conclusion and Recommendation

Accordingly, pursuant to the court's judgment and writ, staff recommends that the Commission adopt the following orders:

1. *Open Meetings Act/Brown Act Reform* – Proposed Order to
    a) Set aside the order setting aside the Statement of Decision in *Open Meetings Act* (CSM 4257) – Attachment A
    b) Set aside the order setting aside the Statement of Decision in *Brown Act Reform* (CSM 4469) – Attachment B
    c) Set aside the order setting aside the consolidated parameters and guidelines in *Open Meetings Act and Brown Act Reform* (04-PGA-33) – Attachment C

d) Reinstate the Statement of Decision in *Open Meetings Act* (CSM 4257) adopted on March 23, 1988 – Attachment D

e) Reinstate the Statement of Decision in *Brown Act Reform* (CSM 4469) adopted on June 28, 2001 – Attachment E

f) Reinstate the consolidated parameters and guidelines in *Open Meetings Act and Brown Act Reform* (04-PGA-33) adopted April 25, 2002 – Attachment F

2. *School Accountability Report Cards* – Proposed Order to

   a) Set aside Statements of Decision on Reconsideration (04-RL-9721-11, 05-RL-9721-03) adopted on July 28, 2005 and January 26, 2006 – Attachment G

   b) Set aside order adopted January 26, 2006, to set aside parameters and guidelines (04-RL-9721-11, 05-RL-9721-03) – Attachment H

   c) Reinstate the Statement of Decision (97-TC-21) adopted on April 23, 1998 – Attachment I

   d) Reinstate the parameters and guidelines (97-TC-21) adopted on August 20, 1998 – Attachment J

3. *Mandate Reimbursement Process* – Proposed Order to

   a) Set aside Statement of Decision on Reconsideration (05-RL-4204-02) adopted on May 25, 2006 – Attachment K

   b) Set aside amended parameters and guidelines (05-RL-4204-02) adopted on July 28, 2006 – Attachment L

   c) Reinstate the Statement of Decision (CSM 4204 & 4485) adopted on April 24, 1986 – Attachment M

   d) Reinstate the amended parameters and guidelines (CSM 4204 & 4485), adopted on September 27, 2005 – Attachment N

4. *Mandate Reimbursement Process II* – Proposed Order to

   a) Set aside Statement of Decision (05-TC-05) adopted on October 4, 2006 – Attachment O

Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes before the orders are issued.

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Attorneys for Petitioners/Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE; COUNTY OF FRESNO; CITY OF NEWPORT BEACH; SWEETWATER UNION HIGH SCHOOL DISTRICT; and COUNTY OF LOS ANGELES,

Petitioner/Plaintiffs,

v.

STATE OF CALIFORNIA; COMMISSION ON STATE MANDATES; STEVE WESTLY, in his official capacity as Controller of the State of California; and DOES 1-5,

Respondent/Defendants.

DEPARTMENT OF FINANCE, Intervenor.

CASE NO.: 06 CS 01335

NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on July 13, 2009, the court entered judgment in the above-captioned matter, granting in part and denying in part the petition for writ of mandate and entering final injunctive and declaratory relief. A true and correct copy of the judgment is attached hereto.

Dated: July 21, 2009

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP
Deborah B. Caplan
N. Eugene Hill

By: _____
DEBORAH B. CAPLAN
Attorneys for Petitioner/Plaintiffs

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE; COUNTY OF FRESNO; CITY OF NEWPORT BEACH; SWEETWATER UNION HIGH SCHOOL DISTRICT; and COUNTY OF LOS ANGELES,

Petitioner/Plaintiffs,

v.

STATE OF CALIFORNIA; COMMISSION ON STATE MANDATES; JOHN CHIANG, in his official capacity as Controller of the State of California; and DOES 1-5,

Respondent/Defendants.

DEPARTMENT OF FINANCE, Intervenor.

CASE NO.: 06 CS 01335

~~[proposed]~~
JUDGMENT OF SUPERIOR COURT FOLLOWING APPEAL

(CCP § 526, 1060 & 1094.5)

DEPT.: 31
JUDGE: Michael P. Kenny

This matter came before this Court on remand after an appeal and cross appeal of this Court's judgment in the above named matter issued on April 20, 2007. The Court of Appeal, Third District issued its opinion related thereto on March 9, 2009, affirming in part and reversing in part, and ordering the modification of this Court's aforementioned judgment and writ of mandate. The Court therefore

vacates the judgment entered on April 20, 2007 and issues a new judgment and writ of mandate in accordance the remand issued by the Court of Appeal as follows.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. It is necessary and proper under the facts of this case for the Court to declare the rights and duties of Petitioners/Plaintiffs California School Boards Association, Education Legal Alliance, County of Fresno, City of Newport Beach, Sweetwater Union High School District and County of Los Angeles and Respondents State of California, Commission on State Mandates and John Chiang, in his official capacity as Controller of the State of California, and Intervenor Department of Finance concerning the application to each of them of article I, section 9, article III, section 3, article IV, section 16, and article XIII B section 6 of the California Constitution, subdivision (f) of section 17756 of the Government Code, sections 7, 11, 12, 13, 14, 16 and 17 of Statutes 2005, chapter 72 (AB 138), section 18 of Statutes 2004, chapter 895 (AB 2855) and section 53 of Statutes 2005, chapter 677 (SB 512).

2. Section 341.5 of the Code of Civil Procedure is not applicable to challenges brought against decisions of the Commission on State Mandates, including those brought under section 17559 of the Code of Civil Procedure. The claims in this proceeding asserted by Petitioners/Plaintiffs California Schools Boards Association, Education Legal Alliance, County of Fresno, City of Newport Beach, Sweetwater Union High School District and County of Los Angeles are not barred by the statute of limitations set forth Code of Civil Procedure section 341.5.

3. Petitioners/Plaintiffs California Schools Boards Association and Education Legal Alliance have both associational and organizational standing to challenge the constitutionality of subdivision (f) of section 17756 of the Government Code; sections 7, 11, 12, 13, 14, 16 and 17 of Statutes 2005, chapter 72 (AB 138); section 18 of Statutes 2004, chapter 895 (AB 2855); and section 53 of Statutes 2005, chapter 677 (SB 512).

4. Section 7 of Statutes of 2005, chapter 72 (AB 138), which amended Government Code section 17556, subdivision (f), conflicts with the provisions of the California Constitution set forth in section 6 of article XIII B insofar as it declares that the Commission on State Mandates shall not find "costs mandated by the State" which are merely "reasonably within the scope of" a ballot measure approved by the voters in a statewide or local election. That language is severable from the remainder

of subdivision (f) and is hereby declared invalid and of no force and effect. However, the remainder of subdivision (f), as amended by section 7 of Statutes of 2005, chapter 72 (AB 138), which requires the Commission on State Mandates to find that costs which are "necessary to implement" or "expressly included in" a ballot measure are not "costs mandated by the State" is consistent with the provisions of the California Constitution set forth in section 6 of article XIII B and petitioners'/plaintiffs' request to declare the remaining language invalid is hereby denied.

5. Government Code section 54954.2, subdivision (c), and Government Code section 54957.1, subdivision (f) (as added by sections 12 and 14 of Statutes 2005, chapter 72 (AB 138)), and section 16 of Statutes 2005, chapter 72 (AB 138), which purport to make findings that certain statutory requirements are "necessary to implement" a particular ballot measure (article I, section 3, subdivision (b)(1), of the California Constitution, as amended by Proposition 59, approved by the voters on November 2, 2004), are invalid and of no force and effect as they conflict with the provisions of the California Constitution set forth in section 3 of article III. These provisions may not be considered by the Commission in any decision it makes as to whether the claim is reimbursable pursuant to article XIII B, section 6 of the California Constitution.

6. Section 17 of Statutes 2005, chapter 72 (AB 138), which directs the Commission to reconsider and set aside its prior decisions in CSM 4204, CSM 4485 (*Mandate Reimbursement Process*), and CSM 4257 and CSM 4469 (*Open Meetings Act/Brown Act Reform*), is hereby declared invalid and of no force and effect as it conflicts with the provisions of the California Constitution set forth in section 3 of article III.

7. Section 18 of Statutes 2004, chapter 895 (AB 2855), which directs the Commission to reconsider its prior decision in 97-TC-21 (*School Accountability Report Cards*), is hereby declared invalid and of no force and effect as it conflicts with the provisions of the California Constitution set forth in section 3 of article III.

8. Section 53 of Statutes 2005, chapter 677 (SB 512), which further directs the Commission to reconsider its prior decision in 97-TC-21 (*School Accountability Report Cards*), is hereby declared invalid and of no force and effect as it conflicts with the provisions of the California Constitution set forth in section 3 of article III.

9. Petitioners'/plaintiffs' requests to declare that Statutes 2005, chapter 72; section 18 of Statutes 2004, chapter 895; and section 53 of Statutes 2005, chapter 677 violate the provisions of article 1, section 9, of the California Constitution is hereby denied.

10. Respondent State of California, Respondent Commission on State Mandates, John Chiang (in his capacity as Controller of the State of California), and Intervenor Department of Finance, and those public officers and employees acting by and through their authority are permanently enjoined from taking any and all action to implement, apply, or enforce in any way, the following:

- Government Code section 17556, subdivision (f), as amended by section 7 of Statutes 2005, chapter 72 insofar as it declares that the Commission on State Mandates shall not find "costs mandated by the State" which are "reasonably within the scope of" a ballot measure approved by the voters in a statewide or local election;
- Government Code section 54954.2, subdivision (c), as added by section 12 of Statutes 2005, chapter 72;
- Government Code section 54957.1, subdivision (f), as added by section 14 of Statutes 2005, chapter 72;
- Section 16 of Statutes 2005, chapter 72 (legislative declaration that Government Code sections 54954.2 and 54957.1 are necessary to implement and reasonably within the scope of the ballot measure adding paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution);
- Section 17 of Statutes 2005, chapter 72 (requiring reconsideration of the *Mandate Reimbursement Process* (CSM 4204 and 4485) and *Open Meetings Act/Brown Act Reform* test claims (CSM 4257 and 4469));
- Section 18 of Statutes of 2004, chapter 895 (requiring reconsideration of the *School Accountability Report Cards* test claim (97-TC-21));
- Section 53 of Statutes of 2005, chapter 677 (requiring further reconsideration of the *School Accountability Report Cards* test claim (97-TC-21)).

11. Respondent Commission on State Mandates has not proceeded in accordance with the law in its decisions reconsidering and/or setting aside its prior mandate determinations in proceedings 97-TC-21, CSM-4204, CSM-4257, CSM-4469 and CSM-4485. Those Commission decisions are hereby set aside and the Commission is directed to take all actions necessary to re-instate its prior mandate determinations *nunc pro tunc* to the date of the decision reconsidering and/or setting aside the prior mandate determination.

12. Respondent Commission on State Mandates has not proceeded in accordance with the

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law in its Statement of Decision in proceeding 05-TC-05 (*Mandate Reimbursement Process II*) as that Decision impermissibly relies on language of Government Code section 17556, subdivision (f), as amended by section 7, Statutes 2005, chapter 72 (AB 138), declared by the Court to be unconstitutional as set forth above.

13. A peremptory writ of mandate shall issue from this Court pursuant to Code of Civil Procedure section 1094.5 directing Respondent Commission on State Mandates to set aside as null and void the order adopted on September 27, 2005 in its entirety, which sets aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), sets aside the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and sets aside the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469.

14. A peremptory writ of mandate shall issue from this Court pursuant to Code of Civil Procedure section 1094.5 directing Respondent Commission on State Mandates to set aside as null and void the Statements of Decision on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Cards*), on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006 decisions.

15. A peremptory writ of mandate shall issue from this Court pursuant to Code of Civil Procedure section 1094.5 directing Respondent Commission on State Mandates to set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, which reconsiders its prior decisions in proceedings CSM-4204 and CSM-4485 (*Mandate Reimbursement Process*), in its entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision.

16. A peremptory writ of mandate shall issue from this Court pursuant to Code of Civil Procedure section 1094.5 directing Respondent Commission on State Mandates to set aside as null and void the Statement of Decision adopted October 4, 2006 in Proceeding 05-TC-05 (*Mandate Reimbursement Process II*) in its entirety, and directing the Commission to commence new proceedings which are consistent with this judgment and which do not take into consideration any legislative declarations as to whether the duties imposed by the statute at issue are "reasonably within the scope of ... a ballot measure" contained in Government Code section 17556, subdivision (f), as amended by

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section 7, Statutes 2005, chapter 72 (AB 138).

17. Respondent Commission on State Mandates shall file a return to the Peremptory Writ of Mandate with respect to the actions taken pursuant to the Writ on *Open Meetings Act/Brown Act Reform* (CSM-4257, 4469), *School Accountability Report Cards* (97-TC-21), and *Mandate Reimbursement Process* (CSM-4204, 4485) within sixty (60) days of service of the Writ that demonstrates compliance with all provisions of writ or show cause why it has not complied.

18. Respondent Commission on State Mandates shall file a return to the Peremptory Writ of Mandate with respect to the actions taken pursuant to the Writ on *Mandate Reimbursement Process II* (05-TC-05) within sixty (60) days of the service of the Writ that demonstrates commencement of new proceedings in compliance with all provisions of the writ or show cause why it has not complied.

19. The Petition for Writ Mandate as set forth in the Seventh Cause of Action is duplicative to the relief set forth above and on that basis is denied.

20. As directed by the Court of Appeal, each party shall bear its own costs on appeal. Petitioners/plaintiffs are entitled to recover their trial costs from Respondent State of California, Respondent John Chiang, as Controller of the State of California, Respondent Commission on State Mandates and Intervenor Department of Finance, upon appropriate application, including a memorandum of costs, in the sum of $_____.

21. The Court retains jurisdiction to consider an award of attorneys' fees in accordance with Code of Civil Procedure section 1021.5 and Rule of Court 3.1702.

JUL 13 2009

Judge of the Superior Court
MICHAEL KENNY

APPROVED AS TO FORM:

Dated: 7/7/09

OLSON, HAGEL, & FISHBURN, LLP

By: Deborah B. Caplan
DEBORAH B. CAPLAN
Attorneys For Petitioners/Plaintiffs

Dated: _____

STATE OF CALIFORNIA
CA STATE CONTROLLER'S OFFICE
DEPARTMENT OF FINANCE

By: _____
ROSS MOODY
OFFICE OF THE ATTORNEY GENERAL

Dated: _____

COMMISSION ON STATE MANDATES

By: _____
CAMILLE SHELTON
CHIEF LEGAL COUNSEL

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APPROVED AS TO FORM:

Dated: _____

OLSON, HAGEL, & FISHBURN, LLP

By: _____
DEBORAH B. CAPLAN
Attorneys For Petitioners/Plaintiffs

Dated: 7/6/09

STATE OF CALIFORNIA
CA STATE CONTROLLER'S OFFICE
DEPARTMENT OF FINANCE

By: _____
ROSS MOODY
OFFICE OF THE ATTORNEY GENERAL

Dated: _____

COMMISSION ON STATE MANDATES

By: _____
CAMILLE SHELTON
CHIEF LEGAL COUNSEL

OLSON, HAGEL & FISHBURN LLP
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APPROVED AS TO FORM:

Dated: _____

OLSON, HAGEL, & FISHBURN, LLP

By: _____
DEBORAH B. CAPLAN
Attorneys For Petitioners/Plaintiffs

Dated: _____

STATE OF CALIFORNIA
CA STATE CONTROLLER'S OFFICE
DEPARTMENT OF FINANCE

By: _____
ROSS MOODY
OFFICE OF THE ATTORNEY GENERAL

Dated: July 16, 2009

COMMISSION ON STATE MANDATES

By: Camille Shelton
CAMILLE SHELTON
CHIEF LEGAL COUNSEL

OLSON, HAGEL & FISHBURN LLP
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DECLARATION OF SERVICE

Case Name : *CA School Boards Association, et al. v. State of California, et al.*
Case No: : 06 CS 01335
Court : **Sacramento County Superior Court**

I declare: I am a citizen of the United States, over the age of 18, and not a party to the within action. My business address is 555 Capitol Mall, Suite 1425, Sacramento, California, 95814. On July 21, 2009, I served a true and correct copy of the following entitled documents:

NOTICE OF ENTRY OF JUDGMENT

on the parties in said action as follows:

__X__ BY MAIL: By placing the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

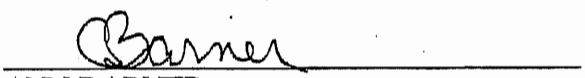
Ross C. Moody
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Tel: 415.703.1376/Fax:
Email: ross.moody@doj.ca.gov

Counsel for STATE OF CALIFORNIA, STEVE WESTLY, Controller of the State of California; DEPARTMENT OF FINANCE

Camille Shelton, Chief Legal Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Tel.: 916.323.3562/Fax: 916.445.0278

Counsel for COMMISSION ON STATE MANDATES

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 July 21, 2009 in Sacramento, California.



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Attorneys for Petitioners/Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE; COUNTY OF FRESNO; CITY OF NEWPORT BEACH; SWEETWATER UNION HIGH SCHOOL DISTRICT; and COUNTY OF LOS ANGELES, Petitioner/Plaintiffs, v. STATE OF CALIFORNIA; COMMISSION ON STATE MANDATES; JOHN CHIANG, in his official capacity as Controller of the State of California; and DOES 1-5, Respondent/Defendants. DEPARTMENT OF FINANCE, Intervenor.	**CASE NO.:** 06 CS 01335 **[~~proposed~~]** **PEREMPTORY WRIT OF MANDATE FOLLOWING APPEAL** **(CCP § 1094.5)** DEPT.: 31 JUDGE: Michael P. Kenny

TO: RESPONDENT COMMISSION ON STATE MANDATES:

It appears from the Court's order entering final judgment that the Respondent Commission on State Mandates has abused that discretion vested in it by law in that it adopted decisions or orders in Proceedings 97-TC-21, 05-TC-05, CSM-4204, CSM-4257, CSM-4469 and CSM-4485 that are not in accordance with the law as found by this Court.

THEREFORE, you are commanded to:

1. Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

2. Set aside as null and void the Statements of Decisions on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Cards*), on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

3. Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (*Mandate Reimbursement Process*) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

4. Set aside as null and void the Statement of Decision adopted October 4, 2006 in Proceeding 05-TC-05 (*Mandate Reimbursement Process II*) in its entirety; you are further directed to commence new proceedings in that matter which are consistent with the ruling of this court, and which do not take into consideration any legislative determinations which refer to duties imposed which are "reasonably within the scope of ... a ballot measure" contained in Government Code section 17556, subdivision (f), as amended by section 7, Statutes 2005, chapter 72 (AB 138).

5. File a Return to this Writ within sixty (60) days of service of the Writ with respect to the actions taken pursuant to the Writ on *Open Meetings Act/Brown Act Reform* (CSM-4257, 4469), *School Accountability Report Cards* (97-TC-21), and *Mandate Reimbursement Process* (CSM-4204, 4485) demonstrating compliance with the terms of the Writ, or show cause as to why you have not complied.

6. File a return to the Peremptory Writ of Mandate with respect to the actions taken

pursuant to the Writ on *Mandate Reimbursement Process II* (05-TC-05) within sixty (60) days of the service of the Writ that demonstrates commencement of new proceedings in compliance with all provisions of the Writ or show cause why it has not complied.

7/14/09 DENNIS JONES
Clerk of the Superior Court
by A. Lee, Deputy Clerk

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. CSM 4257
Government Code Sections 54954.2 and 54954.3; Statutes 1986, Chapters 641 Filed on April 1, 1987 By the County of Los Angeles, Claimant.	*Open Meetings Act* **ORDER TO SET ASIDE ORDER SETTING ASIDE STATEMENT OF DECISION IN CSM 4257** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Order adopted on September 27, 2005, setting aside the Statement of Decision in *Open Meetings Act* (CSM 4257)

Dated: _____

_____
PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code sections 54954.2 and 54954.3; Statutes 1986, Chapters 641 Filed on April 1, 1987 By the County of Los Angeles, Claimant.	No. CSM 4257 *Open Meetings Act* ORDER TO SET ASIDE STATEMENT OF DECISION (Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138)) *Adopted on September 27, 2005*

ORDER TO SET ASIDE STATEMENT OF DECISION

On July 19, 2005, Statutes 2005, chapter 72 (Assem. Bill No. 138 ("AB 138")) became effective and directed the Commission on State Mandates (Commission) to set aside its decision in the *Open Meetings Act* (CSM 4257) test claim. Section 17 of this bill states the following:

> Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

In accordance with AB 138, the Commission hereby sets aside its Statement of Decision, adopted on October 22, 1987, in the *Open Meetings Act* (CSM 4257) test claim. This order to set aside the Statement of Decision shall be operative on July 19, 2005.

Paula Higashi

PAULA HIGASHI, Executive Director

10-7-05

Date

Attachment: Statement of Decision

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. CSM 4469
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes 1993, Chapters 1136, 1137, 1138 and Statutes 1994, Chapter 32; Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant.	*Brown Act Reform* **ORDER TO SET ASIDE ORDER SETTING ASIDE STATEMENT OF DECISION IN CSM 4469** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Order adopted on September 27, 2005, setting aside the Statement of Decision in *Brown Act Reform* (CSM 4469)

Dated: _____

_____
PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes 1993, Chapters 1136, 1137, 1138 and Statutes 1994, Chapter 32; Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant.	No. CSM 4469 *Brown Act Reform* ORDER TO SET ASIDE STATEMENT OF DECISION (Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138)) *Adopted on September 27, 2005*

ORDER TO SET ASIDE STATEMENT OF DECISION

On July 19, 2005, Statutes 2005, chapter 72 (Assem. Bill No. 138 ("AB 138")) became effective and directed the Commission on State Mandates (Commission) to set aside its decision in the *Brown Act Reform* (CSM 4469) test claim. Section 17 of this bill states the following:

> Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

In accordance with AB 138, the Commission hereby sets aside its Statement of Decision, adopted on June 28, 2001, in the *Brown Act Reform* (CSM 4469) test claim. This order to set aside the Statement of Decision shall be operative on July 19, 2005.

Paula Higashi

PAULA HIGASHI, Executive Director

10/7/05

Date

Attachment: Statement of Decision

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7 as amended by Statutes 1986, Chapter 641, and Statutes 1993, Chapters 1136, 1137, 1138 Filed on April 1, 1987 By the County of Los Angeles, Claimant (*Open Meetings Act*, CSM 4257) Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant. (*Brown Act Reform*, CSM 4469)	No. 04-PGA- 33 (a.k.a. CSM 4257 and 4469) *Open Meetings Act and Brown Act Reform* **ORDER TO SET ASIDE ORDER SETTING ASIDE CONSOLIDATED PARAMETERS AND GUIDELINES IN NO. 04-PGA- 33 (a.k.a. CSM 4257 and 4469)** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Order adopted on September 27, 2005, setting aside the consolidated parameters and guidelines in *Open Meetings Act and Brown Act Reform* No. 04-PGA- 33 (a.k.a. CSM 4257 and 4469)

_____ Dated: _____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7 as amended by Statutes 1986, Chapter 641, and Statutes 1993, Chapters 1136, 1137, 1138 Filed on April 1, 1987 By the County of Los Angeles, Claimant (*Open Meetings Act*, CSM 4257) Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant. (*Brown Act Reform*, CSM 4469)	No. 04-PGA- 33 (a.k.a. CSM 4257 and 4469) *Open Meetings Act and Brown Act Reform* ORDER TO SET ASIDE CONSOLIDATED PARAMETERS AND GUIDELINES (Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138 ("AB 138")) *Adopted on September 27, 2005*

ORDER TO SET ASIDE CONSOLIDATED PARAMETERS AND GUIDELINES

In 1988, the Commission on State Mandates (Commission) adopted a Statement of Decision in the *Open Meetings Act* test claim (CSM 4257). The Commission's parameters and guidelines for the *Open Meetings Act* program authorized reimbursement for the increased costs to prepare and post a notice and an agenda containing a brief general description of each item of business to be transacted or discussed at least 72 hours before the meeting of the local legislative body. For purposes of seeking reimbursement for the *Open Meetings Act* program, "legislative body" was defined in former Government Code sections 54952 and 54952.2 to include the governing body of a local agency, permanent decision-making committees or boards created by formal action of the governing body, and temporary decision-making committees or boards created by formal action of the governing body.

In 2001, the Commission adopted a Statement of Decision in the *Brown Act Reform* test claim (CSM 4469). The *Brown Act Reform* test claim addressed the 1993 and 1994 amendments to the Brown Act. The Commission found that the test claim legislation constituted a reimbursable state-mandated program by:

- Adding two new "legislative bodies" required to comply with the provisions of the Brown Act;
- Requiring certain advisory bodies to comply with the full notice and agenda requirements of the Brown Act by preparing and posting, at least 72 hours before the meeting, a notice and agenda that contained a brief general description, generally not to exceed 20 words, of each item of business to be transacted or discussed at the meeting of the advisory body; and

- Requiring all legislative bodies defined in the Brown Act to comply with public disclosure and reporting requirements for closed session meetings.

In 2002, the Commission adopted the parameters and guidelines for *Brown Act Reform*, with a reimbursement period beginning January 1, 1994. The parameters and guidelines were consolidated with the parameters and guidelines for the *Open Meetings Act* program (CSM 4257) for annual reimbursement claims filed for the 2001-2002 fiscal year and thereafter.

Assembly Bill 138

AB 138 became effective and operative on July 19, 2005, and does three things that are relevant to the parameters and guidelines for these programs. First, AB 138 amended Government Code section 17556, subdivision (f), to read as follows:

> 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:
>
> ... (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....

Second, AB 138 repealed and replaced two statutes within the Brown Act, Government Code sections 54954.2 and 54957.1, and added language that the statutes are necessary to implement and are reasonably within the scope of Proposition 59. As more fully discussed below, Proposition 59 was enacted by the voters in the November 2004 election to amend the Constitution to require that meetings of public bodies be open to the public. Section 16 of AB 138 states the following:

> The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

Third, AB 138 requires the Commission to "amend the appropriate parameters and guidelines" for the *Open Meetings Act* and *Brown Act Reform* programs "to be consistent" with this bill. Section 17 of AB 138 states the following:

> Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

Commission Findings

Article XIII B, section 6 of the California Constitution requires reimbursement only when the Legislature or any state agency mandates a new program or higher level of service that results in increased costs mandated by the state. Reimbursement under the Constitution is not required when duties are imposed by the voters. In addition, Government Code section 17556, subdivision (f), as amended by AB 138, prohibits the Commission from finding "costs mandated by the state" when:

> The statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of,* or expressly included in the 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.* (Emphasis added.)

Thus, reimbursement is not required under Government Code section 17556, subdivision (f), when a test claim statute imposes duties that are necessary to implement, are reasonably within the scope of, or are expressly included in a ballot measure approved by the voters either before or after the enactment of the test claim statute. Government Code section 17556, subdivision (f), as amended by AB 138, is a duly enacted statute and must be presumed constitutionally valid.[1]

In November 2004, the voters amended article I, section 3 of the California Constitution through the adoption of Proposition 59. Proposition 59 adds to the Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to the public. Proposition 59 adds the following relevant language to the Constitution:

> (b)(1) 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.
>
> (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
>
> (3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

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[1] *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provision in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided in Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

The ballot materials given to the electorate on Proposition 59 state that: "The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information."[2] Thus, the test claim statutes in the *Open Meetings Act* and *Brown Act Reform* programs do not impose duties that are "expressly included" in the ballot measure. Nevertheless, the Commission finds that the exception to reimbursement found in Government Code section 17556, subdivision (f), applies since the test claim statutes are "necessary to implement" and are "reasonably within the scope of" Proposition 59.

The purpose of Proposition 59 is expressly stated as follows: "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. 1, § 3, subd. (b)(1).) To implement the voter's intent, Proposition 59 acknowledges the existing open meetings statutes and requires that the existing statutes be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. Const., art. 1, § 3, subd. (b)(2).) The Brown Act is specifically identified in the ballot materials provided to the voters as existing law governing the open meetings for local legislative bodies.[3]

The purpose of the Brown Act, as declared by the Legislature in 1953, is similar to the purpose of Proposition 59. Government Code section 54950 provides that:

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[2] Ballot Pamphlet, Statewide General Election (Nov. 2, 2004) Proposition 59, analysis by the Legislative Analyst. The courts frequently look to ballot materials in order to understand the terms of a measure enacted by the electorate. (*County of Fresno v. State of California* (1990) 53 Cal.3d 482, 287; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 737.)

[3] *Id.*

> In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The test claim statutes further this purpose by requiring the following activities that are listed in the parameters and guidelines:

- Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting. (Gov. Code, § 54954.2.)
- Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, 54954.3.)
- Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7.)
- Reconvene in open session prior to adjournment to make any disclosures required by Government Code Section 54957.1 of action taken in the closed session. (Gov. Code, §§ 54957.1, 54957.7.)

Since the purpose of the Brown Act and the purpose of Proposition 59 are to ensure that the people have the right of access to information concerning the conduct of the people's business, the Commission finds that the activities identified in the parameters and guidelines are necessary to implement and are reasonably within the scope of Proposition 59. Moreover, the Legislature expressly declared, when enacting AB 138 in July 2005, that Government Code sections 54954.2 and 54957.1 "are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution." (AB 138, § 16.)

Therefore, the Commission finds that Government Code section 17556, subdivision (f), applies to the *Open Meetings Act* and *Brown Act Reform* programs and, thus, the activities listed in the parameters and guidelines are no longer reimbursable. AB 138 became operative and effective on July 19, 2005. Section 17 of the bill, when directing the Commission to set aside the *Open Meetings Act* and *Brown Act Reform* decisions, states that "the operative date of these actions shall be the effective date of this act."

Therefore, the Commission sets aside the consolidated parameters and guidelines for these programs, effective July 19, 2005.

Paula Higashi

PAULA HIGASHI, Executive Director

10/6/07

Date

Attachment: Consolidated Parameters and Guidelines

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Government Code Sections 54954.2 and 54954.3; Statutes 1986, Chapters 641 Filed on April 1, 1987 By the County of Los Angeles, Claimant.	No. CSM 4257 *Open Meetings Act* **ORDER TO REINSTATE STATEMENT OF DECISION IN CSM 4257** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Statement of Decision in *Open Meetings Act* (CSM 4257), adopted on March 23, 1988

_____ Dated: _____
PAULA HIGASHI, Executive Director

BEFORE. THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: City of Las Angeles Claimant	"No. CSM-4257 Chapter 641, Statutes of 1986 Government Code Sections 54954.2 and 54954.3 Open Meetings Act

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on March 23, 1988.

IT IS SO ORDERED March 23, 1988.

Russell Gould, Chairperson
Commission on State Mandates

WP 1775A-1

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of: City of Los Angeles Claimant	No., CSM-4257 Government Code Sections 54954.2 and 54954.3 Chapter 641, Statutes of 1986 Open Meetings Act

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on October 22, 1987, in Sacramento, California, during a regularly scheduled meeting. Louis Chappuie appeared on behalf of the City of Los Angeles. James Apps- appeared on behalf of the Department of Finance. There were no other appearances,

Evidence both oral ahd documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does. not mean that all increased costs. claimed will be reimbursed. Reimbursement, if any, is subject to. commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific appropriation by the Legislature for such pur p.se; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim of the City of Los Angeles was filed with the Commission on State Mandates. on April 1, 1987.

2. The subject of the claim is Chapter 641, Statutes of 1986, Government Code Sections 54954.2 and 64954.3,

3. Chapter 641, Statutes of 1986 added Sections 54954.2 and 54954.3 to. the Government Code to require the legislative body of a local agency to post an agenda containing a brief genera? description of each item of business to be transacted or discussed at a regular meeting, and would prohibit any action to be taken, as defined,, on any item not appearing on the posted agenda. Additionally, this statute would require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body,

4. A higher level of service is now required of the legislative body of a local agency by Chapter 641, Statutes of 1986, Government Code Sections 54964.2 and 54954.3,

5. Government Code Section 17514 defines-the term "costs mandated by *he.-state" as "any increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, which mandates . . . a higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

6. The City of Los Angeles has demonstrated that. it has Incurred increased costs which are costs mandated by the state.

7. None of the requisites for denying a claim, specified in Government Code Section 17556, subdivision (a), were established.

III.

DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551.,

2. Chapter 641, Statutes of 7986 imposed a reimbursable state mandate on the legislative body of a local agency. The City of Los Angeles has established that this statute imposed a higher level of service of an existing program by requiring the legislative body of a local agency to post an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, and would prohibit any action to be taken, as defined, on any item not appearing on the posted agenda. Additionally, this statute would require that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of Interest to the public that are within the subject matter jurisdiction of the legislative body.

WP:0117d

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. CSM 4469
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes 1993, Chapters 1136, 1137, 1138 and Statutes 1994, Chapter 32;	*Brown Act Reform*
Filed on December 29, 1994 and amended on August 7, 2000;	**ORDER TO REINSTATE STATEMENT OF DECISION IN CSM 4469**
By the City of Newport Beach, Claimant.	(*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Statement of Decision in *Brown Act Reform* (CSM 4469), adopted on June 28, 2001

Dated: _____

PAULA HIGASHI, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32; Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant.	No. CSM 4469 *Brown Act Reform* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on June 28, 2001)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on May 24, 2001 during a regularly scheduled hearing. Mr. Glen Everroad and Ms. Pamela Stone appeared on behalf of the City of Newport Beach. Mr. Allan Burdick appeared on behalf of the California State Association of Counties. Mr. Cedrik Zemitis and Mr. Jim Lombard appeared for the Department of Finance.

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

The Commission, by a vote of 4 to 2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies[1] to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereafter referred to as the Brown Act or the Act).[2] Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

The California Legislature enacted the Brown Act in 1953 based on an Assembly Judiciary Committee Report regarding the "secret decisionmaking" of local governments. The Act

[1] As used in the Ralph M. Brown Act, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board,commission, or agency thereof, or other local public agency. (Gov. Code, § 54951.)

[2] All further statutory references are to the California Government Code unless otherwise indicated.

declared the law's intent that deliberations as well as action of local agencies occur openly and publicly. It also represented the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other.[3] The underlying theme of the Brown Act recognizes that:

> The people [of this State], in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.[4]

Since the Brown Act was enacted, it has been amended regularly to expand the requirements of the Act and to clarify the "legislative bodies" to which the requirements of the Act apply. Numerous court cases and Attorney General Opinions have re-affirmed the Legislature's original intent to ensure that deliberations and decisionmaking of local agencies be conducted in an open forum with full participation from the public.

Prior Test Claims

The Commission on State Mandates has previously determined two test claims on the Brown Act.

Open Meetings Act (CSM-4257)

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies *for the first time* to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

Under CSM-4257, local agencies were eligible for reimbursement for the Brown Act requirements for the following types of legislative bodies: 1) the governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity; 2) any board, commission, committee, or body which exercises authority delegated to it by the legislative body; and, 3) planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body. The Commission's Parameters and Guidelines for CSM-4257 specifically provided reimbursement for the increased costs to prepare and post a single agenda 72 hours before a meeting of the legislative body of a local agency containing a brief general description of each item of business to be transacted or discussed.

School Site Councils and Brown Act Reform (CSM-4501)

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[3] California Attorney General's Office, The Brown Act, Open Meetings forLocal Legislative Bodies (1994).
[4] Government Code section 54950.

The Brown Act came before the Commission again in test claim CSM-4501, *School Site Councils and Brown Act Reform*, filed by the Kern High School District, San Diego Unified School District, and the County of Santa Clara. This test claim was filed on Government Code section 54952 and Education Code section 35147 and addressed the application of the open meeting provisions of the Brown Act to specified schoolsite councils and advisory committees of school districts. On April 27, 2000, the Commission approved this test claim finding that Statutes of 1993, chapter 1138 among other things, added Government Code section 54952, subdivision (a), which provided, in relevant part, that the term "legislative body" for purposes of the open meeting requirements of the Brown Act also included any local body created by state or federal statute.

The Commission also found that Statutes of 1994, chapter 239 removed certain school site councils and advisory committees from the full requirements of the Brown Act, but added Education Code section 35147, which imposed an abbreviated set of open meeting requirements on school site councils and advisory committees established as part of the following programs: School Improvement Program; Native American Indian Early Childhood Education Act; Chacon-Moscone Bilingual-Bicultural Education Act; School-Based Coordination Program; Compensatory Education Program; Migrant Education Program; Motivation and Maintenance Program; and the federal Indian Education Program.

The Commission's Parameters and Guidelines for CSM-4501 provided reimbursement for notice and agenda activities for school district's schoolsite councils and certain advisory committees.

Claimant's Contentions

In their test claim, claimant contends that the test claim legislation imposes an increased level of service on local agencies. The claimant asserts the following:

- Government Code section 54952, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the definition of "legislative body" which is subject to the notice requirements of the Brown Act. The agenda preparation and posting requirements of section 54954.2 now apply to an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute;
- Government Code section 54954.2, subdivision (a), as amended, imposes a higher level of service on local agencies by expanding the notice requirements to include a description of each item to be discussed or transacted in closed session;
- Government Code sections 54957.1, subdivisions (a), (b) and (c) and 54957.7, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the nature and extent of the required public reporting of action taken in closed sessions; and,
- These amendments require an increased level of service by local agencies, necessitating training for local agencies.

Department of Finance Contentions

The Department of Finance (DOF) submitted comments on this test claim on June 1, 1995. Their contention is that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to provide cost savings to local governments by simplifying and clarifying the Brown Act requirements. Finally, regarding chapter 32, the DOF states that this is essentially clean-up legislation for the other three named chapters and does not affect the scope of the changes made by those chapters. Consequently, it is the DOF's belief that there are no reimbursable state-mandated costs in that legislation.[5]

At the hearing, the DOF argued that local agencies requested the enactment of the test claim legislation, and therefore, there are no costs mandated by the state.

Interested Party Contentions

The County Counsel of Marin County submitted comments in support of the test claim on May 30, 1995. Their contention is that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp, author of the majority of the Brown Act legislation, submitted comments in opposition to the test claim. His contention is that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

The California Newspaper Publishers Association submitted comments in opposition to the test claim. Their contention is that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas. The First Amendment Coalition submitted comments in opposition to the test claim adopting the arguments and conclusion of the California Newspaper Publishers Association.

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[5] Regarding chapter 32, the test claim submitted by claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim."

Paul C. Minney of Spector, Middleton, Young & Minney, LLP submitted comments on the Draft Staff Analysis. His contention is that both permanent and temporary decisionmaking committees or boards created by formal action are "new legislative bodies" under the test claim statute because these bodies can exercise authority broader than that granted to the legislative body.

COMMISSION FINDINGS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental entities. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service 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. To determine if the "program" is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state."[6]

The test claim legislation requires the performance of certain activities related to public meetings by specified "legislative bodies" of local agencies. These local governmental bodies are carrying out a basic governmental function of making decisions regarding the operations of local agencies that provide services to the public. The mandatory compliance with the Brown Act is unique to local agencies; it is a peculiarly governmental function that does not apply to all residents and entities in the state. Therefore, the Commission finds that compliance by local agencies with the open meeting requirements of the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission continued its inquiry to determine if the test claim legislation constitutes a new program or higher level of service and imposes "costs mandated by the state" upon local agencies. Claimant contends that the test claim legislation imposes a higher level of service upon local agencies because the agenda preparation and posting requirements apply to an increased number of entities now defined as "legislative bodies" such as standing committees, advisory bodies and other local bodies created by state or federal statute. Claimant also contends that the test claim legislation requires new activities regarding the inclusion of closed session items on

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[6] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

agendas and the reporting of closed session items both prior to and after the closed session. The analysis of these issues for the statutes at issue is discussed below.

Issue 1: Does the test claim legislation impose a new program or higher level of service upon local governmental bodies within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1 is presented in two parts: Part One discusses the entities subject to the open session notice and agenda requirements and Part Two discusses the closed session requirements for all legislative bodies.

Part One: Entities Subject to Open Session Notice and Agenda Requirements

The notice and agenda provisions of the Brown Act are found in Government Code section 54954.2. Under the test claim legislation, this section requires the "legislative bodies" of local agencies to post a notice and agenda containing a brief general description of each item to be discussed at the meeting. Section 54954.2 states in relevant part the following:

> At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

New Entities Subject to the Notice & Agenda Requirements

Government Code section 54952 describes the "legislative bodies" required to comply with the Brown Act. The test claim legislation substantially amended section 54952 to clarify and describe the "legislative bodies" in greater detail. Section 54952 now defines "legislative body" in relevant part as follows:

> (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. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

Thus, the "legislative bodies" required to comply with the Brown Act now include the following:

- The governing body of a local agency;

- A local body created by state or federal statute;
- A permanent decisionmaking body created by formal action;
- A temporary decisionmaking body created by formal action;
- A permanent advisory body created by formal action (except an advisory body with less than a quorum of the members);
- A temporary advisory body created by formal action (except an advisory body with less than a quorum of the members); and,
- Standing committees, irrespective of their composition with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

Under prior law, the "legislative body" of a local agency required to comply with the Brown Act was defined in several statutory provisions. Section 54952 defined the governing body of a local agency or any board or commission thereof, and any body on which officers of a local agency serve in their official capacity as members; section 54952.2 defined any multimember body with delegated authority of the legislative body; section 54952.3 defined any advisory body created by formal action and included both reduced notice requirements and an exemption from all Brown Act requirements for a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body; and, section 54952.5 defined planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency as "legislative bodies."

While amending section 54952, the test claim legislation also repealed sections 54952.2, 54952.3 and 54952.5. Based on the following analysis, the Commission finds that the test claim legislation created the following two new "legislative bodies" required to comply with the provisions of the Brown Act including the notice and agenda requirements of section 54954.2:

- Any local body created by state or federal statute

This body was not identified as a "legislative body" in prior law. Thus, the Commission finds that under the test claim legislation, it *is* a new body required to comply with the open session notice and agenda requirements imposed by Government Code section 54954.2; and,

- Standing committees with less than a quorum of the governing body which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action

The test claim legislation defines legislative body to include "standing committees of a legislative body, *irrespective of their composition*, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action." Historically, standing committees were permanent committees that met regularly and considered subjects of a particular class.[7] Their composition, however, varied depending on the body that created them.

Prior to the enactment of the test claim legislation, the various statutory provisions regarding the application of the Brown Act created much confusion as to whether committees, regardless of their composition, fell under the requirements of the Act. However, numerous judicial decisions

[7] 79 Ops.Cal.Atty.Gen. 69, 72 (1996).

and opinions of the Attorney General found that the Brown Act essentially governed *all* meetings of a *quorum* of the legislative body of a local agency when the public's business was discussed.[8]

In 1993, just prior to the passage of the test claim legislation, this issue was finally resolved in the *Freedom Newspaper* case.[9] In *Freedom*, a newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The Supreme Court held that since the operations committee was an advisory committee composed solely of board members *numbering less than a quorum of the board*, the committee was not a "legislative body" pursuant to the provisions of Government Code section 54952.3, and was therefore excluded from the open meeting requirements of the Brown Act. The *Freedom* Court agreed with a long-standing 1968 Attorney General Opinion that stated: "[w]e have consistently concluded that committees composed of *less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of that Act.*" (Emphasis supplied).[10]

Thus, the Commission finds that while standing committees with less than a quorum of the members of the legislative body were exempt from the requirements of the Brown Act under prior law, the test claim legislation now defines "standing committees, *irrespective of their composition*" as new bodies required to comply with the open session notice and agenda requirements imposed by section 54954.2.

Regarding the other five bodies identified in the test claim legislation, the Commission finds they are not new "legislative bodies" because they were identified in prior law as follows:

- Governing body of a local agency

This body is identified as a "legislative body" in prior law in section 54952 and thus it is not a new body.

- Permanent decisionmaking committee or board created by formal action

Interested Person, Paul C. Minney, contends that permanent decisionmaking committees created by formal action were not subject to the Brown Act before the enactment of the test claim legislation. In his comments, he states:

> Staff's conclusion [in the draft staff analysis] is predicated upon the assumption that the legislative body of a local agency can only create a "permanent decision making board" which may exercise the authority of the body that created it. This assumption is incorrect. For example, when a school district approves a charter school (by formal action) it creates a permanent body with decision making body [sic] that exercises authority broader than that granted to the school district...

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[8] *Id.*, at page 69, fn 3.

[9] *Freedom Newspapers, Inc., v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832-833.

[10] *Id.*, at pages 828-829.

The Commission disagrees. Under prior law, section 54952.2 stated:

> As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises *any authority* of a legislative body of a local agency *delegated* to it by that legislative body. (Emphasis added.)

Also, under prior law, section 54952.5 specifically included permanent boards and commissions of local agencies within the coverage of the Brown Act. That section stated:

> As used in this chapter, 'legislative body' also includes, but is not limited to, planning commissions, library boards, recreation commissions, *and other permanent boards or commissions* of a local agency. (Emphasis added.)

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way.[11] The plain language of former sections 54952.2 and 54952.5 include permanent boards and commissions as legislative bodies and any board or commission that exercises any authority delegated to it; i.e. decisionmaking authority.

Moreover, in their 1989 booklet, *Open Meeting Laws*, the Attorney General's Office determined that decisionmaking bodies were required to comply with the Brown Act before the enactment of the test claim legislation. In the booklet, the Attorney General's Office states:

> *Under current law, decision-making bodies would primarily be covered under section 54952 or 54952.2* and advisory committees under section 54952.3. However, section 54952.5 was invoked by this office to apply to a hearing board of an air pollution control district. (71 Ops.Cal.Atty.Gen. 96 (1988).) Although there is not a published opinion or indexed letter precisely on point, we think that permanent committees (e.g., budget or finance committees) comprised solely of less than a quorum of the members of a board or commission were not intended to be covered by section 54952.5. (See discussion of less than a quorum exception in section C(6) at page 20 in this pamphlet.) *However, if such committees "exercise" enough "authority" "delegated" to them by a legislative body, they might be covered by section 54952.2 as a decision-making body rather than an advisory body.*

While the Attorney General's views do not bind the Commission, they are entitled to considerable weight. This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements.[12]

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[11] *City of Merced* v. *State of California* (1984) 153 Cal.App.3d 777; *Carrisales* v. *Department of Corrections* (1999) 21 Cal.4th 1132.

[12] *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors*, *supra*, 6 Cal.4th at p. 829.

Accordingly, the Commission finds that permanent decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Temporary decisionmaking committee or board created by formal action

This body is also identified as a "legislative body" in prior law under section 54952.2 as discussed above. Section 54952.2 stated:

> As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Emphasis added.)

For the same reasons discussed under the section analyzing permanent decisionmaking bodies, the Commission finds that temporary decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Permanent advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in sections 54952.3 and 54952.5. Section 54952.3 defined "legislative body" as *any* advisory committee created by formal action. In addition, section 54952.3 provides an exception for any advisory committee composed solely of less than a quorum of the members of the legislative body. Section 54952.5 also defined "legislative body" to include permanent boards or commissions of a local agency. Thus, the Commission finds that permanent advisory committees or boards created by formal action (except less than a quorum of the members) were "legislative bodies" under prior law.

- Temporary advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in section 54952.3 as discussed above, and thus, the Commission finds that this body was a "legislative body" under prior law.

- Standing committees comprised of a quorum of the members of the legislative body

These bodies are also defined as a "legislative body" under prior law. Standing committees, by definition, are permanent committees that regularly consider a particular subject matter. When comprised of a quorum of the members of the legislative body, these committees fall under the definition of a committee with delegated authority since they are empowered to make decisions on behalf of the legislative body.[13] In addition, standing committees comprised of a quorum of the members fall under the definition of "legislative body" in former Government Code sections 54952.3 and 54952.5 (i.e. permanent advisory committees of a local agency). Thus, the Commission finds that standing committees composed of at least a quorum of the members of the legislative body are not new bodies under the test claim legislation.

The chart below provides a summary of the Commission's findings:

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[13] Former Government Code section 54952.2 stated in relevant part as follows:
> "...legislative body also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Test Claim Legislation Section 54952	Prior Law Sections 54952, 54952.3, 54952.3, 54952.5
Governing body	§ 54952 Governing body
Local body created by state or federal statute	**NEW**
Permanent decisionmaking committee or board created by formal action	§ 54952.2 Any board, committee, body that exercises any authority of a legislative body *delegated* to it by the legislative body § 54952.5 Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency
Temporary decisionmaking committee or board created by formal action	§ 54952.2
Permanent advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3 *Any* advisory committee created by formal action (except less than a quorum of the members) § 54952.5 Planning commissions, library boards, recreation commission, *and other permanent* boards or commissions of a local agency
Temporary advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3
Standing committees, irrespective of their composition (i.e. even those with less than a quorum of the members of the legislative body) with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action	**NEW--Standing committees with less than a quorum of the members** However, standing committees with a quorum of members of the legislative body are covered in prior law through §§ 54952.2, 54952.3 and 54952.5.

Based on the foregoing, the Commission finds that Government Code sections 54952 and 54954.2, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for two new bodies (local bodies created by state or federal statute and standing committees with less than a quorum of the members of the legislative body with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action) to prepare and post an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Advisory Bodies Subject to the Notice & Agenda Requirements

In the *Open Meetings Act* (CSM-4257) test claim, the Commission determined that Government Code section 54954.2 imposed a reimbursable state mandated program upon "all legislative bodies," as defined, to post a notice and agenda 72 hours prior to the meeting of a legislative body. That section also required that the notice and agenda contain a brief general description of all items to be discussed at the meeting. Section 54954.2 was enacted in 1986 and applied to all legislative bodies, which by definition included advisory bodies before the enactment of the test claim legislation.

However, prior law (former Government Code section 54952.3, which was enacted in 1968) also *exempted* advisory bodies from the regular notice and agenda provisions of the Act and held them to significantly reduced notice requirements:

> Meetings of such advisory commissions, committees or bodies...shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.
>
> If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. *No other notice of regular meetings is required.* (Emphasis added.)

Thus, prior law, as specified in sections 54954.2 and 54952.3, imposed conflicting duties on advisory bodies. If an advisory body complied with section 54952.3 by not preparing and posting an agenda, did it violate section 54954.2? In other words, which statute constitutes prior law with respect to the duties imposed on advisory bodies?

Sutherland Statutory Construction, a treatise on statutory construction, explains that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed to be in accord with the legislative policy embodied in those prior statutes. When a conflict exists, the more specific statute controls over the more general one.[14] However, where the conflict is irreconcilable, the statute that is the more recent of the two conflicting statutes prevails.[15]

In this case, the Commission finds the express language of section 54952.3 is more specific than the provisions of section 54954.2 and thus, prevails as prior law. Section 54952.3 *specifically* identified advisory commissions and committees as legislative bodies that were not required to prepare and post an agenda. They were only required to deliver notice of their meetings 24-hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. In contrast, section 54954.2 *generally* referred to "the legislative body of the local agency, or its designee," when describing the bodies to which the notice requirements applied. Thus, by the repeal of section 54952.3 by the test claim legislation, advisory bodies are now subject, for the first time, to the full notice and agenda requirements specified in section 54954.2, subdivision (a), of the Brown Act.

Therefore, the Commission finds that Government Code section 54954.2, subdivision (a), constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all permanent and temporary advisory bodies created by formal action (except less than a quorum of the members of the legislative body) to comply with the full notice and agenda requirements of the Brown Act by preparing and posting an agenda of their meetings

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[14] *People v. Tanner* (1979) 24 Cal.3d 514, 521, where the California Supreme Court states that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates."

[15] 2B, Sutherland, Statutory Construction (5th Ed. 1994) § 51.02.

72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Part Two: Closed Session Requirements

Under prior law, the legislative body was required to state the reasons for a closed session either before or after the closed session and to publicly report the action and vote taken in closed session regarding the appointment, employment or dismissal of a public employee. The test claim legislation added four new closed session requirements that apply to all "legislative bodies" including those newly defined under the test claim legislation.

Notice and Agenda Requirements

The test claim legislation amended the notice and agenda provisions to include closed session items on the agenda. Section 54954.2 states, in relevant part, the following:

> At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Underlined portion indicates amendments to this section by the test claim legislation).

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held.[16] The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, the Commission finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to *or* after the closed session, to state the general reason for the closed session and to include the appropriate statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

> (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda.

[16] Former Government Code section 54957.7.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, the Commission finds that Government Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows:

> (b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,[17] the actions and votes taken in closed session for the following items:

> (1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:
>
> > (A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.
> > (B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.
>
> (2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or

[17] Government Code section 54957.1(b) provides in relevant part the following:
"Reports that are required to be made pursuant to this section may be made orally or in writing."

more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

> (A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.
> (B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee*.[18] Other issues that could be discussed in closed session such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.[19] The test claim legislation now requires the legislative body to

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[18] Former section 54957.1 stated the following:

> "The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of anyclosed session of the legislative body."

[19] Government Code sections 54956.7, 54956.8, 54956.9, 54957.

reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, the Commission finds that Government Code sections 54957.7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (1-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

> (b)...The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendment for the benefit of the document requester or any other person present and requesting the information.
>
> (c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the actions referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency...". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

Accordingly, the Commission finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative

bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 17514 provides in relevant part the following:

> 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...which mandates a new program or higher level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

> 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 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 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.

At the May 24, 2001 hearing, the Department of Finance contended that local agencies requested the enactment of the test claim legislation and, thus, there are no costs mandated by the state. Mr. Cedrik Zemitis testified on behalf of the Department of Finance as follows:

> MR. ZEMITIS: Second, local request, we would note that at the time the test claim statute was considered by the legislature, it was clear that these bills were introduced at the behest of local governments. The author of most of the bills stated for the record at the time that existing law was amended specifically at the request of local agencies. Indeed, numerous legislative committee analyses support the author.
>
> In addition, the California School Boards Association at the time stated that clarification of the existing Brown Act will not create additional costs to local government. In addition, the California State Association of Counties and numerous other local entities all officially supported the legislation because it would simplify and clarify the Brown Act with no additional costs.

> While we do not have resolutions from all of the affected local entities, which would be in the thousands literally, representatives of those entities clearly sponsored the legislation as well as reported savings and no new costs. Therefore we believe any mandate would not be reimbursable.[20]

In response, the claimant testified that the City of Newport Beach did not request legislative authority to implement the program nor did they sponsor the test claim legislation.[21] In addition, there is no evidence in the record of a resolution from any governing body of a local agency requesting authorization to implement the test claim legislation. Therefore, the Commission finds that Government Code section 17556, subdivision (a) does not apply in this test claim.

Further, section 17556, subdivision (e) provides that 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:

> (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.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

The original claimant, the County of Santa Clara, submitted a declaration to support their contention that the test claim legislation resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional $560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional $2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional $6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in *no* net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants

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[20] Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 14, line 25; page 15, lines 1-25; page 16, lines 1-7.

[21] Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 29, lines 15-21.

by limiting the agenda descriptions to "20 words or less", the Commission finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention. Thus, the Commission finds that Government Code section 17556, subdivision (e) does not apply in this test claim.

Therefore, the Commission finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

Activity	Applies To
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

Activity	Applies To
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

The Commission further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

Attachment F

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7 as amended by Statutes 1986, Chapter 641, and Statutes 1993, Chapters 1136, 1137, 1138 Filed on April 1, 1987 By the County of Los Angeles, Claimant (*Open Meetings Act*, CSM 4257) Filed on December 29, 1994 and amended on August 7, 2000; By the City of Newport Beach, Claimant. (*Brown Act Reform*, CSM 4469)	No. 04-PGA- 33 (a.k.a. CSM 4257 and 4469) *Open Meetings Act and Brown Act Reform* **ORDER TO REINSTATE CONSOLIDATED PARAMETERS AND GUIDELINES IN NO. 04-PGA- 33 (a.k.a. CSM 4257 and 4469)** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the order adopted on September 27, 2005 setting aside the Statement of Decision in Proceeding CSM-4257 (*Open Meeting Act*), the Statement of Decision in Proceeding CSM-4469 (*Brown Act Reform*) and the consolidated parameters and guidelines pertaining to Proceeding CSM-4257 and CSM-4469, in their entirety, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Consolidated parameters and guidelines in *Open Meetings Act and Brown Act Reform* No. 04-PGA- 33 (a.k.a. CSM 4257 and 4469), adopted on April 25, 2002.

Dated: _____

_____

PAULA HIGASHI, Executive Director

Set Aside: July 19, 2005
Adopted: April 25, 2002
j:\mandates\csm4000\4469\PsGs\pgadopt042502

Parameters and Guidelines

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

Statutes of 1986, Chapter 641
Statutes of 1993, Chapters 1136, 1137 and 1138

Open Meetings Act/Brown Act Reform

I. SUMMARY OF THE MANDATE

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

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

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.[1]

II. ELIGIBLE CLAIMANTS

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

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[1] The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform.*

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. Agenda Preparation and Posting Activities

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

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

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

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

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[2] As amended by Statutes of 1993, chapter 1136.

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

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
   a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
   b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
   c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
   d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
   e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as

set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform.* If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

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

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

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.[3] Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

[3] The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

   List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

   Counties and cities may claim indirect costs pursuant to section V.C.

2. Standard Time

   a. Main Legislative Body Meetings of Counties and Cities

      List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

      Counties and cities may claim indirect costs pursuant to section V.C.

   b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

      List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

      Special districts, counties and cities may claim indirect costs pursuant to section V.C.

   c. School and Community College Districts and County Offices of Education

      List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

      School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate[4]

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes

[4] The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification is as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	$60	$12	29%	$13	$85
City Attorney	$55	$10	30%	$15	$80
City Clerk	$40	$ 8	31%	$12	$60
Department Manager	$45	$ 9	30%	$11	$65
Secretaries	$18	$ 5	25%	$ 7	$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	$85	$14.25
City Attorney	15%	$80	$12.00
City Clerk	36%	$60	$21.60
Department Manager	9%	$65	$ 5.85
Secretaries	23%	$30	$ 6.90
Total	100%		$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the

reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463; Statutes 1992, Chapter 759; Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824; Statutes 1997, Chapter 918 Filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants Reconsideration Directed by Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), As Amended by Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512)	Case No. 04-RL-9721-11, 05-RL-9721-03 *School Accountability Report Cards* **ORDER TO SET ASIDE STATEMENTS OF DECISION ON RECONSIDERATION** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statements of Decision on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Card),* on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached documents:

- Statement of Decision on Reconsideration in *School Accountability Report Cards* (04-RL-9721-11), adopted on July 28, 2005
- Statement of Decision on Reconsideration in *School Accountability Report Cards* (05-RL-9721-03), adopted on January 26, 2006

Dated:_____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 918; Test Claim No: 97-TC-21; Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855) , Operative January 1, 2005.	No. 04-RL-9721-11 *School Accountability Report Cards* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 28, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard this test claim reconsideration during a regularly scheduled hearing on May 26, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance. The motion to adopt the staff analysis resulted in a tie vote.

The Commission reheard and decided this test claim reconsideration during a regularly scheduled hearing on July 28, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Robert Miyashiro, with the Education Mandated Cost Network; Richard Hamilton, with the California School Boards Association; and Estelle Lemieux, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis, denying the reconsidered portions of the test claim, by a vote of 3-2.

BACKGROUND

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

> Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21), was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

> The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.
>
> The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:
>
> - Salaries paid to schoolteachers, school site principals, and school district superintendents.
> - Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
> - "The degree to which pupils are prepared to enter the work force."
> - "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
> - "The total number of minimum days, . . . , in the school year."
> - Salary information provided by the Superintendent of Public Instruction.
>
> The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

The reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie-vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).)

School District and Interested Parties' Positions

In December 2004, interested parties and state agencies were asked to file briefs on the issues under reconsideration. On May 9, 2005, the Commission received comments on the draft staff analysis from Sweetwater Union High School District, stating complete disagreement with the conclusions; asserting that the test claim legislation imposed a higher level of service on school districts. The district's specific comments will be discussed in the analysis below.

On May 25, 2005, a late filing was received from the Education Management Group, disputing the conclusions of the staff analysis, particularly the findings recommended under the "costs mandated by the state" portion of the analysis.

At the May 26, 2005 Commission hearing, the following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association.

School Innovations and Advocacy outlined two issues: 1) whether school districts must prove that they use property tax revenues, and 2) whether the new requirements of the school accountability report card are a higher level of service. Regarding the first issue, School Innovations and Advocacy argued that school districts cannot prove that local property tax revenues are used to comply with specific mandates because the funds are commingled with other funds received through Proposition 98. School Innovations and Advocacy added that school district accounting procedures are largely regulated by the state, and the state does not require that funds be segregated. Unlike the case cited in staff's analysis, School Innovations and Advocacy contended that in this case, there is no specific appropriation or funding stream for the program. School Innovations and Advocacy maintained that nothing new happened for the Commission to believe that a new interpretation of the law is necessary.

With regard to the second issue and staff's position that the new requirements are minimal, School Innovations and Advocacy asserted that there needs to be a dollar amount or percentage standard that provides guidance because the program could be further amended in the future.[1]

The California School Employees Association associated themselves with the comments made by School Innovations and Advocacy. The California School Employees Association disputed the argument that changes are minimal if school districts must break funds down to property tax revenues.[2]

Education Mandated Cost Network addressed the *de minimis* nature of the claim, arguing that while staff believes that incidental duties do not require reimbursement, staff did not establish a minimum dollar amount. Education Mandated Cost Network noted that the law specifies a thousand-dollar threshold for filing a reimbursement claim and that the Commission adopted a statewide cost estimate of $1.7 million for this program, and added that this estimate was the thirteenth largest of the 30 estimates adopted in 2002-2003.

Education Mandated Cost Network clarified that Proposition 98 does not appropriate money for any program. Rather, it establishes a minimum funding guarantee level for which the Legislature then makes appropriations to specific programs. Thus, Education Mandated Cost Network asserted that it is not sufficient to reference the Proposition 98 guarantee and conclude that the minimum requirements fund a particular program because an appropriation must be made to fund the program. Education Mandated Cost Network argued that the language of Proposition 98 is not specifically intended for the *School Accountability Report Card* program and concluded

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[1] May 26, 2005 Commission Hearing Transcript, pages 136-140.

[2] *Id.* at pages 140-141.

that the staff analysis has not overcome the original findings of the Commission. Education Mandated Cost Network strongly urged the Commission to reject the staff analysis and to let the 1998 decision stand.[3]

The Education Coalition and the Association of California School Administrators associated their organizations "with the remarks made by the previous three speakers."[4]

The California Teachers Association agreed with all the previous comments and additionally urged the Commission "to oppose any test claim recommendation that would affect the funding source or perpetuate the under-funding of funds for the California schools."[5]

The California School Boards Association concurred with the previous comments, stating that the staff analysis does not address Government Code section 17556, subdivision (f), "which speaks of imposing duties that are expressly included in a ballot measure."[6]

Following the May hearing, another comment period was granted to the parties, including a one-week extension of time. Comments were received on July 8, 2005, from School Innovations & Advocacy. Those comments argue that all legislative amendments to requirements to the School Accountability Report Card are reimbursable if they were not "expressly included in a ballot measure;" that Proposition 98 funds should not be considered "program funds" required to be used as an offset to legislative amendments to School Accountability Report Cards; and that application of the 2003 *County of Los Angeles* decision requires "an analysis of the costs of the various legislative mandates related to the SARC [School Accountability Report Card]."

On July 8, 2005, Los Angeles Unified School District submitted a letter joining in the comments from School Innovations & Advocacy. Commission staff received comments from the California School Boards Association/Education Legal Alliance on July 11, 2005, and from Education Mandated Cost Network on July 18, 2005, explaining the organizations' oppositions to the staff analysis and also joining in the filing from School Innovations & Advocacy.

A late filing dated July 25, 2005, was received from School Innovations and Advocacy. The letter argues the Commission cannot consider recent amendments to Government Code section 17556, subdivision (f), when making its decision on reconsideration, because Assembly Bill (AB) 2855 only explicitly requests reconsideration "in light of federal statutes enacted and state court decisions rendered since these statutes were enacted."

State Agency Position

On May 6, 2005, the Commission received comments on the draft staff analysis from Department of Finance stating agreement with the draft staff analysis, and noting that the "administration intends to pursue legislation requiring the Commission to also reconsider the portion of this test claim related to Chapter 912, Statutes of 1997." Department of Finance concluded, "it appears that the omission of this statutory reference from AB 2855 was inadvertent."

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[3] *Id.* at pages 141-144.

[4] *Id.* at page 144.

[5] *Ibid.*

[6] *Id.* at page 145.

Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance at the May 26, 2005 Commission hearing; they provided testimony continuing to support the staff analysis and recommendation. Department of Finance disagreed with the comments of the interested persons and argued that Government Code section 17556, subdivision (f), specifically states that ballot measures adopted by the voters on a statewide initiative do not impose reimbursable mandates for duties expressly included in the ballot measure. Department of Finance explained that the School Accountability Report Card is not limited to the provisions originally set out in the Education Code because the electorate recognized that the details of the model report card are subject to change and districts are required to comply with those changes. Therefore, Department of Finance asserted that this program is not reimbursable as it was a statewide ballot measure.[7]

No comments on the reconsideration were received from other state agencies.

Legislative Analyst's Office Report

On March 22, 2004, the Legislative Analyst's Office distributed a report entitled *Proposition 98 Mandates, Part III.*[8] This report to the Legislature discusses recommendations related to the *School Accountability Report Cards* mandate, as follows:

> Recommend the committee amend state law to waive reimbursement for mandates when federal law is changed, requiring activities similar to the state mandate.
>
> The federal No Child Left Behind (NCLB) Act requires report cards similar to the one required by the state. Since the state requirement was enacted first, however, state law directs CSM to recognize as reimbursable all mandated costs of the report cards.
>
> This law unnecessarily disadvantages the state. The state could eliminate the mandate, for instance, and schools would still be required under federal law to issue school report cards.
>
> In addition, NCLB provided substantial increases in district funding to pay for the new requirements of the act. Districts, therefore, have received funding for the cost of mandates in the new law.[9]

Following release of this report, AB 2855, in addition to ordering the reconsideration of the *School Accountability Report Cards* Statement of Decision, also amended Government Code section 17556, subdivision (c), to provide that when a "statute or executive order imposes a requirement that is mandated by a federal law or regulation," federal mandates enacted before *or after* the state law precludes a finding of costs mandated by the state.

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[7] May 26, 2005 Commission Hearing Transcript, pages 145-149.

[8] *Proposition 98 Mandates, Part III*, at <http://www.lao.ca.gov/handouts/education/2004/Mandates_Part_III_032204.pdf> [as of May 10, 2005.]

[9] *Id.* at page 4.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[10] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[11] "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."[12] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[13] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[14]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[15] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[16] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[17]

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[10] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 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."

[11] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[12] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[13] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[14] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

[16] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[18]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[19] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[20]

Issue 1: What is the scope of the Commission's jurisdiction directed by AB 2855?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[21]

Since the Commission was created by the Legislature, its powers are limited to those authorized by statute.[22] Government Code section 17551 requires 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 reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim, and generally grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on AB 2855. Absent AB 2855, the Commission would have no jurisdiction to reconsider any part of the *School Accountability Report Cards* decision since the original decision was adopted and issued in 1998, well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by AB 2855, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the

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

[19] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[20] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[21] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[22] Government Code section 17500 et seq.

Legislature.[23] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of AB 2855.

Under the rules of statutory construction, when the statutory language is plain the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][24]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[25] To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[26]

Statutes 2004, chapter 895, section 18 (AB 2855), directs the Commission to reconsider the prior final decision in *School Accountability Report Cards*, as follows:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
>
> (a) Chapter 1463 of the Statutes of 1989.
>
> (b) Chapter 759 of the Statutes of 1992.
>
> (c) Chapter 1031 of the Statutes of 1993.
>
> (d) Chapter 824 of the Statutes of 1994.
>
> (e) Chapter 918 of the Statutes of 1997.

Statutes 1997, Chapter 912.

Statutes 1997, chapter 912 was part of the original test claim decision, but was not included in the reconsideration statute. Therefore, Statutes 1997, chapter 912, as it amended Education Code section 33126, cannot be reconsidered by the Commission at this time.

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[23] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[24] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[25] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[26] *Estate of Griswold, supra*, 25 Cal.4th at page 911.

Education Code Section 35256.

Although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was not added or amended by any of the statutes and chapters listed in AB 2855. No reimbursable state-mandated activities were attributed to this code section in the original Commission decision because it was added to the code through Proposition 98, and to date, Education Code section 35256 has never been amended by the Legislature. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The legislation does not specify a reimbursement period for any changes to the *School Accountability Report Cards* parameters and guidelines following the reconsideration of the underlying test claim decision. The courts have established a strong presumption against the retroactive application of statutes:

> As Chief Justice Gibson wrote for the court in *Aetna Cas. & Surety Co. v. Ind. Acc. Com., supra*, 30 Cal.2d 388 - the seminal retroactivity decision noted above – "[i]t is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent." (30 Cal.2d at p. 393.) This rule has been repeated and followed in innumerable decisions.[27]

In the absence of clear legislative intent to the contrary, the Commission finds that AB 2855 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *School Accountability Report Cards*, subsequent changes to the parameters and guidelines will be effective for reimbursement claims filed for the 2005-2006 fiscal year.

Issue 2: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Test Claim Legislation Subject to Reconsideration

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service 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.[28] The court has held that only one of these findings is necessary.[29]

The Commission finds that providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests.

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[27] *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207.

[28] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[29] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to "promote a model statewide standard of instructional accountability and conditions for teaching and learning."[30] The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[31]

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, because the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a "program" and, thus, may be subject to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 3: Does the test claim legislation impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at state-mandated increases in the services provided by local agencies.[32]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[33] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[34] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] 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. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the

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[30] Education Code section 33126, as added to the Education Code by Proposition 98.

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

[32] *County of Los Angeles, supra*, 43 Cal.3d at 56.

[33] *Long Beach Unified School District, supra,* 225 Cal.App.4th 155.

[34] *Id.* at page 173.

> requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], 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: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[35]

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f), was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

> 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: . . .
>
> (f) The statute or executive order imposesd duties that ~~were~~ 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.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

> The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.
>
> (a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

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[35] *Ibid.*

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1993, CHAPTER 1031 AND STATUTES 1994, CHAPTER 824:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), "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" do not impose reimbursable state mandates.

Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, follows. Amendments to the original initiative language are indicated in underline and strikethrough:

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card.

(a) The model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card shall include, but is not limited to, assessment of the following school conditions:

(1) ~~Student~~ Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per pupil 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.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other ~~student~~ pupil 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.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(b) In developing the statewide model ~~S~~school ~~A~~accountability ~~R~~report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the ~~S~~superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, ~~provided that~~ However, the majority of the task force shall consist of practicing classroom teachers.

In the original test claim filing, the claimants alleged the test claim statutes "impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98."[36] Claimants specifically alleged that Statutes 1993, chapter 1031 "amended Education Code section 33126 to add the requirement that school districts include an assessment of the degree to which students are prepared to enter the workforce," and Statutes 1994, chapter 824 "amended Education Code section 33126 to add the requirement that school districts include in their school accountability report cards (1) the total number of instructional minutes and (2) the total number of minimum days in the school year."[37] The claimants argued that "districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards" for the additional activities alleged.[38]

The Commission must determine whether the data elements identified are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise "necessary to implement, reasonably within the scope of" the original initiative. Intent to *change* the law must not be presumed by an amendment. The

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[36] *Test Claim Filing*, Administrative Record [AR], page 43.

[37] *Id.* at page 44.

[38] *Id.* at page 45.

courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][39]

Proposition 98, "The Classroom Instructional Improvement and Accountability Act," was adopted by the voters in 1988. The initial statement of "Purpose and Intent" declared, in part, "The People of the State of California find and declare that:"

> (e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

Proposition 98, section 13, provides: "No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." (Emphasis added.) Both Statutes 1993, chapter 1031, and Statutes 1994, chapter 824 were passed by a two-thirds vote of the Legislature and signed by the Governor.[40] Each statute also affirmatively states: "The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[41] The Commission must presume legislative amendments to the requirements for the School Accountability Report Card are constitutionally valid,[42] and thus such amendments must also be presumed to further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a "new program."

In this instance, the Commission finds that the legislation adding subdivisions (a)(14) through (16) requires data be provided in the School Accountability Report Card that was not expressly included in the original requirements of Proposition 98. The following data elements are new:

- The degree to which pupils are prepared to enter the workforce.

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[39] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[40] Bill histories found at < http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0151-0200/ab_198_bill_history> (Stats. 1993, ch. 1031) and < http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1651-1700/sb_1665_bill_history> (Stats. 1994, ch. 824) [as of July 20, 2005.]

[41] AR, pages 69 and 71.

[42] Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

- The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.
- The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

However, the addition of this information to the School Accountability Report Card may be interpreted as "reasonably within the scope of" the original initiative. Either way, this does not necessarily rise to the level of a higher level of service or impose costs mandated by the state within the meaning recognized by the courts. As explained below, these incidental duties do not require subvention.

Sweetwater Union, in comments received May 9, 2005, asserts, "Proposition 98 was the base for the law requiring School Accountability Report Cards and the 13 original requirements, and created the measuring point upon which the required service was based. The onslaught of additional School Accountability Report Card requirements through legilative [sic] actions, intended to provided [sic] additional information to the public, elevated the required points of service to a higher level."

Assuming, for purposes of analysis, that the claimants did meet their burden of proving a higher level of service for the new information required to be included in the School Accountability Report Card, they have not met their burden of proving costs mandated by the state. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required. The court concluded:

> 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 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.
>
> [¶]…[¶]
>
> [M]erely 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.

Finally, the court concluded (*id.*, at p. 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 [the test claim legislation].

Likewise here, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." Sweetwater Union's comments on the draft staff analysis argue this "**IS NOT** material to the issue of whether or not a mandate has been imposed."[43] The district further states that this citation "does not reflect: (1) the wording that appears in; or (2) the intention of; the State's Constitutional protection provided to local governmental agencies." The district does not explain how the *County of Los Angeles* decision is distinguishable from the test claim under reconsideration, but rather implies that the court's decision violates certain protections to local agencies established by the California Constitution. In exercising its jurisdiction to decide test claims, the Commission must follow the courts' rulings in precedential decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court's published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded. Therefore, the Commission follows the court's analysis and finds no costs mandated by the state were imposed in these circumstances.

In comments received July 8, 2005, School Innovations & Advocacy states:

> Finally, Commission staff cites *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, as support for the argument that the legislative amendments to the SARC are *de minimis* and do not mandate increased costs, therefore no reimbursement is required. [Footnote and citation omitted.] However, staff provides no analysis of the costs of the various legislative mandates related to the SARC. Indeed, the Commission's prior ruling on these mandates suggest the cost is not minimal. The Commission adopted a statewide cost estimate for SARC I of $1.7 million. It is our understanding that in order of total cost SARC I was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of these 30 claims can be considered *de minimis* and not reimbursable? Staff should clearly state a standard by which SARC I costs can be measured to determine whether or not they are *de minimis*. Is there a dollar amount threshold? Is the standard based on the percentage of the legislative amendments costs compared to the total SARC costs? Is each legislative amendment assessed individually, or should the Commission look at the aggregate costs of all legislative amendments to determine whether costs are *de minimis?* Without such an analysis the argument that the legislative mandates related to SARC are *de minimis* is simply a stated conclusion rather than a finding based on evidence.

First, the original staff analysis did not discuss "*de minimis*" costs or activities. *De minimis* is defined in Black's Law Dictionary (7th ed.) as "Trifling, minimal," or "so insignificant that a court may overlook it in deciding an issue or case." The application of the *County of Los Angeles* decision is focused on the court's finding that "In the case of an existing program,"

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[43] Emphasis in original.

(in this case, the original School Accountability Report Card requirements established by Proposition 98) "an increase in existing costs does not result in a reimbursement requirement." In addition, examining whether legislative amendments "can be complied with by a minimal reallocation of resources," is not synonymous with finding that those amendments result in *de minimis* costs.

However, as the issue was raised repeatedly by the interested parties at the May 2005 hearing, and in subsequent written comments, we will address the *de minimis* argument here. The California Supreme Court in *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 888-890, discussed a *de minimis* standard as it applied in a situation where there is an existing federal law program, (non-reimbursable pursuant to the express language of art. XIII B, § 6 and Gov. Code, § 17556, subd. (c)) and the state then "articulated specific procedures, not expressly set forth in federal law."[44] The Court expressly affirmed the appellate decision in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, as follows:

> 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 purposes 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.
>
> [¶...¶]
>
> 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 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. [Emphasis added.]

To analogize to the School Accountability Report Cards claim, there is an existing voter-initiative program, (non-reimbursable pursuant to art. XIII B, § 6 and Gov. Code, § 17556, subd. (f),) for which the state Legislature subsequently articulated procedures which were not explicit in the original voter-initiative. Following the logic expressed by the California Supreme Court in the recent *San Diego Unified School Dist.* decision, the legislative requirements under reconsideration here should be viewed as part and parcel of the underlying Proposition 98

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[44] *Id.* at page 888.

mandate. Note that the Court did not come up with a dollar amount as a threshold for determining *de minimis* additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be *de minimis*, "in context."

There are several problems with the assertions made by the interested parties in regards to a *de minimis* analysis. First is reliance on the statewide cost estimate for the original test claim decision in order to establish whether the costs claimed are *de minimis* in nature. The statewide cost estimate for School Accountability Report Cards (97-TC-21) was adopted March 25, 1999 and contained the following findings:

> **Methodology**
>
> To arrive at the total statewide cost estimate, staff:
>
> - Used 531 unaudited actual claim totals filed with the State Controller for prior fiscal years for which claims were filed, [fn. Current data as of February 1999.] and
> - Projected current and future fiscal year totals using the following formula:
>
> *Prior year claim total ($) x The Implicit Price Deflator* [fn. As projected by the Department of Finance.]
>
> **Recommendation**
>
> Staff recommends that the Commission adopt this proposed statewide cost estimate in the amount of $5,713,000 for costs incurred in complying with the provisions set forth in the test claim statutes.
>
> Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	**Total**
1996-97	$ 923,927
1997-98	$1,564,310
1998-99	$1,592,468
1999-00	$1,632,279
Total	$5,712,984
Total (rounded)	**$5,713,000**

> Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of $5,712,984 has been rounded to $5,713,000.

The first problem with relying on the statewide cost estimate as a factor in defining a *de minimis* standard in this case is in using unaudited claims data. Second, the original decision and claims include a significant number of activities attributed to Statutes 1997, chapter 912,[45] which is not subject to this reconsideration. From the statewide cost estimate data, it is impossible to determine how much of the costs are solely attributable to Statutes 1997, chapter 912.

School Innovations & Advocacy's July 8, 2005 comments, as well as statements made by the Education Mandated Cost Network at the May hearing, assert that "in order of total cost SARC I

[45] See the Conclusion, below.

was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of the these claims can be considered *de minimis* and not reimbursable?"

The Commission finds that this "numbers" argument is equally misleading. A *de minimis* analysis should not compare the School Accountability Report Card claims to the size of other mandates claims, but rather compare how the claims fit into the larger pre-existing program of providing a School Accountability Report Card under Proposition 98, and how significant the claims are in light of the state funding available under Proposition 98.

The Commission cannot analyze the first *de minimis* approach because we have no evidence in the record regarding what the true cost to schools would be of completing an annual School Accountability Report Card if the Legislature had *never* made amendments following the original Proposition 98 requirements. To make a fair comparison, the Commission would have to know what it costs to complete the School Accountability Report Card, then determine what percentage of the costs are solely attributable to the activities subject to reconsideration. Indeed, statements of the California Supreme Court suggest that the Commission should not be expected to undertake such an "impractical" analysis when determining mandates claims.[46]

The second approach is to compare the costs of the activities to the funding available. In order to make a reasonable funding comparison, we can examine the cost estimate data from the 1999-2000 fiscal year. The statewide cost estimate uses a figure of $1,632,279 for costs from School Accountability Report Cards for 1999-2000. Ignoring the fact that a significant portion of the $1.6 million estimate should be attributable to Statutes 1997, chapter 912, we will use this figure. School districts received over $27 billion in state Proposition 98 funds for 1999-2000.[47] $1,632,279 is .006 percent of $27,162,572,602. Expressed another way, this is 6 cents out of every $1000 in state funding. The Commission asserts that this is a *de minimis* figure, in every sense of the term.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, "Key Statewide Averages Fiscal Year 2001-02"[48] demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,[49] and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) "No state duty of subvention is triggered where the local agency is

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[46] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 889.

[47] "Key Statewide Averages Fiscal Year 1999-00"At <http://www.cde.ca.gov/ds/fd/ks/k12educ9900.asp> [as of Jul. 20, 2005.] The CDE is the department statutorily charged with receiving school district and county office of education budget, audit, apportionment, and other financial status reports, pursuant to Education Code section 42129.

[48] At <http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp> [as of Jul. 20, 2005.]

[49] Over $31 billion for fiscal year 2000-2001.

not required to expend its proceeds of taxes." (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.)

Sweetwater Union, in comments received May 9, 2005, asserts, "Under current law, Revenue Limits are the primary source of funding for a school district, and consist of the combination of State revenues and Local revenues. Local property taxes are collected by a county tax collector, and reported to the state for purpose of reducing the State level of funding for school district Revenue Limits. ... In addition, since Proposition 13, local agencies DO NOT have the ability to increase property taxes to accommodate State imposed mandated higher levels of service."

The Commission agrees that school districts are not able to increase property taxes in order to pay for School Accountability Report Cards; however, as described by the courts, the *required* expenditure of tax revenues is a threshold issue for finding "costs mandated by the state."

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

> 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 ... program, we nevertheless conclude that under the circumstances here presented, *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*. [Emphasis added.]

(*Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that state funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a second and independent ground, the Commission finds that the test claim legislation does not impose costs mandated by the state.

On May 25, 2005, a late filing was received from the Education Management Group. The letter asserts that staff's analysis on costs mandated by the state is based on a new legal theory requiring schools to prove that reimbursable mandated costs are paid from a property tax source. The Education Management Group argues this would make it impossible for school districts to prove any past or future mandate claims, due to an accounting burden that schools cannot meet.

The Commission finds that the interested party takes the funding argument out of context. The analysis is on a test claim for School Accountability Report Cards, which, as previously stated, is uniquely tied to the Proposition 98 funding guarantee. As described above, districts receive well over 31 billion dollars a year through Proposition 98; therefore the Commission finds that to receive reimbursement for this test claim, districts have the burden to prove that they are required to exceed Proposition 98 funding in order to provide annual School Accountability Report Cards.

Interested parties argue that if this analysis is adopted by the Commission, districts are going to be forced in future mandate claims to prove that they used their Proposition 98 funds to offset *all* state mandate requirements. This is an erroneous assumption. As a quasi-judicial body, each of the Commission's mandate decisions must be supported by current constitutional, statutory and case law, but each decision is limited to the claim presented and Commission decisions are not precedential. However, the Commission also notes that this decision does *not* present a novel theory of law as stated in the late filing. This exact issue and language was heard and adopted by the Commission over a year ago at the March 2004 hearing on *School Accountability Report Cards II and III.*

Thus, for the reasons stated above, the Commission finds that Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

STATUTES 1989, CHAPTER 1463 AND STATUTES 1992, CHAPTER 759:

Education Code Section 35256.1.

Education Code section 35256.1, as added by Statutes 1989, chapter 1463:

> In addition to the information required under Section 35256, each School Accountability Report Card shall include the information required under Section 41409.3.

The requirement to include additional information in the School Accountability Report Card is codified in this Education Code section, but the requirement is expressed in detail as part of Education Code section 41409.3, also added by Statutes 1989, chapter 1463. Therefore, the requirement to "include the information required under Section 41409.3" will be discussed below, under the "Education Code section 41409.3" heading.

Education Code Section 41409.

Education Code section 41409 was added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759.[50] The code section requires the state Superintendent of Public Instruction to "determine the statewide average percentage of school district expenditures that are allocated to the salaries of administrative personnel, ... [and] also shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of teachers."

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[50] Further amendments by Statutes 2001, chapter 734 (AB 804), was the subject of the *School Accountability Report Cards II and III* Statement of Decision.

Education Code section 41409, subdivision (c), provides:

> The statewide averages calculated pursuant to subdivisions (a) and (b) shall be provided annually to each school district for use in the school accountability report card.

This statute, as amended by Statutes 1992, chapter 759, was found in the Commission's April 23, 1998 Statement of Decision to impose a mandate for the inclusion of information on "salaries paid to schoolteachers, school site principals, and school district superintendents."

The Commission finds that Education Code section 41409 does not directly require any activities of school districts, but is a directive to the state Superintendent of Public Instruction to provide certain information to school districts. Thus, Education Code section 41409 does not impose a new program or higher level of service on school districts. However, Education Code section 41409.3 does require districts to include this information in their School Accountability Report Cards, as discussed below.

Education Code Section 41409.3.

Education Code section 41409.3, as added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, follows:

> Each school district, except for school districts maintaining a single school to serve kindergarten or any of grades 1 to 12, inclusive, shall include in the school accountability report card required under Section 35256 a statement that shall include the following information:
>
> (a) The beginning, median, and highest salary paid to teachers in the district, as reflected in the district's salary scale.
>
> (b) The average salary for schoolsite principals in the district.
>
> (c) The salary of the district superintendent.
>
> (d) Based upon the state summary information provided by the Superintendent of Public Instruction pursuant to subdivision (b) of Section 41409, the statewide average salary for the appropriate size and type of district for the following:
>
> (1) Beginning, midrange, and highest salary paid to teachers.
>
> (2) Schoolsite principals.
>
> (3) District superintendents.
>
> (e) The statewide average of the percentage of school district expenditures allocated for the salaries of administrative personnel for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction pursuant to subdivision (a) of Section 41409.
>
> (f) The percentage allocated under the district's corresponding fiscal year expenditure for the salaries of administrative personnel, as defined in Sections 1200, 1300, 1700, 1800, and 2200 of the California School Accounting Manual published by the State Department of Education.
>
> (g) The statewide average of the percentage of school district expenditures allocated for the salaries of teachers for the appropriate size and type of district

for the most recent fiscal year, provided by the Superintendent of Public Instruction, pursuant to subdivision (a) of Section 41409.

(h) The percentage expended for the salaries of teachers, as defined in Section 1100 of the California School Accounting Manual published by the State Department of Education.

The Commission agrees that prior to the adoption of Statutes 1989, chapter 1463, adding Education Code sections 35256.1 and 41403.9, there was no state requirement for including local and statewide teacher, principal, and superintendent salary information in the School Accountability Report Card. The CDE website has files available for download containing all of the statewide data needed for the School Accountability Report Card (subdivisions (d) through (h).) The CDE website also provides a School Accountability Report Card template for optional use by school districts, which contains all of the state data to meet this requirement already filled in.[51] The district does need to gather and enter their own salary information on the state template, or on the district's own form.

Proposition 98 added Education Code section 35256, which includes the provisions: "The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126;" and "Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education."[52]

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

The same analysis for finding a new program or higher level of service and costs mandated by the state regarding data elements added to the School Accountability Report Card through legislative amendments to Education Code section 33126, as discussed above, applies to Education Code sections 35256.1 and 41409.3. In brief, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources."[53] In addition, in *Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that

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[51] At <http://www.cde.ca.gov/ta/ac/sa/> [as of Jul. 20, 2005.]

[52] The full text of Education Code section 35256 is above.

[53] *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th at pages 1193-1194.

the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35256.1, as added by Statutes 1989, chapter 1463, and Education Code sections 41409 and 41409.3, as added Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, do not impose a new program or higher level of service on school districts, and do not impose costs mandated by the state.

STATUTES 1997, CHAPTER 918:

Education Code Section 35258.

Education Code section 35258, as added by Statutes 1997, chapter 918:

> On or before July 1, 1998, each school district that is connected to the Internet shall make the information contained in the School Accountability Report Card developed pursuant to Section 35256 accessible on the Internet. The School Accountability Report Card information shall be updated annually.

The original School Accountability Report Card distribution requirement from Proposition 98 was codified in Education Code section 35256 (see full text and discussion above.) Subdivision (c) follows:

> The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

Statutes 1997, chapter 918, section 1 (uncodified), provides:

> (a) The Legislature finds and declares that, although our state has embraced technology in creating a revolution of growth, our schools have not kept pace with this technology revolution. Access to information through the use of technology has become an integral and crucial part in the decisionmaking processes of government, industry, and the home. However, our schools do not facilitate access to information through one of the most available information technology mediums, the Internet.
>
> (b) It is the intent of the Legislature to improve the access of parents and the community to school-based information.

It is clear from the adoption of Education Code section 35256 as part of the 1988 Proposition 98 school funding scheme, the electorate wanted districts to provide widespread accessibility for the School Accountability Report Card. In 1997, the Legislature recognized that new technology was now widely available for this purpose and newly required that all districts with an existing connection to the Internet must use this technology to disseminate School Accountability Report Cards.

By requiring a new method for publicizing and distributing the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government,"

when "the directive can be complied with by a minimal reallocation of resources."[54] In addition, in *Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35258, as added by Statutes 1997, chapter 918, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Education Code sections 33126, 35256.1, 35258, 41409, and 41409.3, as added or amended by Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918, do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In the case of reimbursable state-mandated activities from Statutes 1997, chapter 912, the Commission does not have statutory authority to rehear that portion of the original decision.[55]

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[54] *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th at pages 1193-1194. See full discussion, above.

[55] The original Statement of Decision found that Statutes 1997, chapter 912, "amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:"

- results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment (§ 33126, subd. (b)(1));
- for schools with high school seniors, the average verbal and math Scholastic Assessment Test scores to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period (§ 33126, subd. (b)(1));
- the one-year dropout rate for the schoolsite over the most recent three-year period (§ 33126, subd. (b)(2));
- the distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period (§ 33126 subd. (b)(4));

Finally, although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was added by Proposition 98, and not added or amended by one of the statutes named in AB 2855. No reimbursable activities were attributed to Education Code section 35256 in the original decision.

- the total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period (§ 33126, subd. (b)(5));
- any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period (§ 33126, subd. (b)(5));
- the annual number of schooldays dedicated to staff development for the most recent three-year period (§ 33126, subd. (b)(10)); and
- the suspension and expulsion rates for the most recent three-year period (§ 33126, subd. (b)(11))."

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 912 and 918; Test Claim No: 97-TC-21; Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), and Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512).	No. 04-RL-9721-11, 05-RL-9721-03 *School Accountability Report Cards* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on January 26, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on January 26, 2006. Lenin del Castillo appeared for the Department of Finance.

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

The Commission adopted the staff analysis at the hearing by a vote of 5 to 2.

Summary of Findings

The Commission finds that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Statutes 2005, chapter 677, section 53:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005 for purposes of establishing the reimbursement period for the revised parameters and guidelines.

Background

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

> Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21) was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

> The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.
>
> The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:
>
> - Salaries paid to schoolteachers, school site principals, and school district superintendents.
> - Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
> - "The degree to which pupils are prepared to enter the work force."
> - "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
> - "The total number of minimum days, . . . , in the school year."
> - Salary information provided by the Superintendent of Public Instruction.
>
> The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

First Reconsideration Decision: *School Accountability Report Cards (04-RL-9721-11)*

Statutes 2004, chapter 895, section 18 (AB 2855), directed the Commission to reconsider the prior final decision in *School Accountability Report Cards* for Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918. AB 2855 named the other statutes with specificity, but did not include Statutes 1997, chapter 912; therefore the Commission found it did not have jurisdiction to reconsider that portion of the original *School Accountability Report Cards* decision.

The AB 2855 reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).) A fifth member was appointed to the Commission before the next hearing.

The Statement of Decision on the AB 2855 reconsideration was adopted at the July 28, 2005 Commission hearing, denying reimbursement for the reconsidered portions of the original test claim.

Second Reconsideration: *School Accountability Report Cards (05-RL-9721-03)*

The Legislature subsequently amended AB 2855, through Statutes 2005, chapter 677, section 53 (SB 512, urgency, operative Oct. 7, 2005), as follows (changes indicated in underline and strikethrough):

> Section 18 of Chapter 895 of the Statutes of 2004 is amended to read:
>
> Sec. 18. (a) Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, for paragraphs (1) to (5), inclusive, and on or before January 31, 2006, for paragraph (6), reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes, particularly in light of federal and state statutes enacted and state court decisions rendered since these statutes were enacted:
>
> ~~(a)~~(1) Chapter 1463 of the Statutes of 1989.
> ~~(b)~~(2) Chapter 759 of the Statutes of 1992.
> ~~(c)~~(3) Chapter 1031 of the Statutes of 1993.
> ~~(d)~~(4) Chapter 824 of the Statutes of 1994.
> ~~(e)~~(5) Chapter 918 of the Statutes of 1997.
> (6) Chapter 912 of the Statutes of 1997.
>
> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.
>
> (c) Notwithstanding any other provision of law, the parameters and guidelines associated with the test claim of 97-TC-21 shall be adjusted to conform to the decision of the Commission on State Mandates on its reconsiderations.

The Commission must now reconsider Statutes 1997, chapter 912, which was not originally included in the AB 2855 reconsideration statute, as well as amend the reimbursement period for the reconsidered test claim to conform with the express language of SB 512.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[1] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[2] "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."[3] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[4] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[5]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[6] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[7] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[8]

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[1] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 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."

[2] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[3] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[4] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[5] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

[7] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[8] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[9]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[10] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[11]

Issue 1: What is the scope of the Commission's jurisdiction and operative date of the reconsidered decisions directed by AB 2855 and SB 512?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[12]

The court in *Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 149-150, found that "in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918].)" In the amendments made by SB 512, the Legislature did not direct the Commission to set aside the AB 2855 reconsideration, completed July 28, 2005, and it is now past the 30-day time period in which a further reconsideration could have been requested pursuant to Government Code section 17559. Therefore, in the absence of a court or legislative order, the July 28, 2005 Statement of Decision is final, except for amending the period of reimbursement to conform to the express language of SB 512, as discussed below.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The original legislation did not stipulate a reimbursement period for any changes to the *School Accountability Report Cards* parameters and guidelines following the reconsideration of the underlying test claim decision. However, when AB 2855 was amended by SB 512 (urgency, operative Oct. 7, 2005), the intended operative date of the reconsidered decision was specified, as follows:

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

[10] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[11] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[12] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus, both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005, for purposes of establishing the reimbursement period for the revised parameters and guidelines.

Issue 2: Is Statutes 1997, chapter 912 subject to article XIII B, section 6 of the California Constitution?

In order for Statutes 1997, chapter 912 to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service 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.[13] The court has held that only one of these findings is necessary.[14]

Statutes 1997, chapter 912 modified the content requirements for School Accountability Report Cards. Providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to "promote a model statewide standard of instructional accountability and conditions for teaching and learning."[15] The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[16]

Statutes 1997, chapter 912 also satisfies the second test that triggers article XIII B, section 6, because it requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a "program" and, thus, Statutes 1997, chapter 912 may be subject to article XIII B, section 6 of the California Constitution if the test claim legislation also imposes a new program or higher level of service, and costs mandated by the state.

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[13] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[14] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

[15] Education Code section 33126, as added to the Education Code by Proposition 98.

[16] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at page 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . administered by local agencies to provide service to the public."

Issue 3: Does Statutes 1997, chapter 912 impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at state-mandated increases in the services provided by local agencies.[17]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[18] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[19] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] 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. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], 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: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[20]

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f) was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

> 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: . . .

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[17] *County of Los Angeles, supra*, 43 Cal.3d at 56.

[18] *Long Beach Unified School Dist., supra,* 225 Cal.App.4th 155.

[19] *Id.* at page 173.

[20] *Ibid.*

(f) The statute or executive order imposesd duties that ~~were~~ 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.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

> The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.
>
> (a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.
>
> (b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.
>
> (c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1997, CHAPTER 912:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution,

and Government Code section 17556, subdivision (f), "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" do not impose reimbursable state mandates.

Education Code section 33126, as amended by Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 912, follows. Amendments to Education Code section 33126 by Statutes 1997, chapter 912 are indicated in underline and strikethrough:

~~In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model school accountability report card.~~

(a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

~~(a)~~ (b) The ~~model~~ school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period. After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chpter 6 (commencing with Section 60800) of Part 33, the school accountability report card shall include pupil achievement by grade level, as measured by the results of the statewide assessment. Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System information for the most recent three-year period.

(5) The total number of the schools's credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials and ~~A~~any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other pupil 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, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the work force.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

~~(b) In developing the statewide model school accountability report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists. However, the majority of the task force shall consist of practicing classroom teachers.~~

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

In the original test claim filing, the claimants alleged the test claim statutes "impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98."[21] Claimants specifically alleged that Statutes 1997, chapter 912 "amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:"

(1) Results by grade level of specified student assessment tools (such as SAT scores) for the most recent three-year period;

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[21] *Test Claim Filing*, Administrative Record [AR], page 43.

(2) the one year dropout rate for the schoolsite over the most recent three-year period;

(3) the distribution of class sizes by grade level, the average class size, and the percentage of pupil [sic] in kindergarten and grades 1 through 3 participating in the state's Class Size Reduction Program;

(4) the total number of credentialed teachers, the number of teachers relying upon emergency credentials, and the assignment of teachers outside of their subject area of competence for the most recent three-year period;

(5) the annual number of school days dedicated to staff development for the most recent three-year period; and

(6) suspension and expulsion rates for the most recent three year period.[22]

The claimants argued that "districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards" for the additional activities alleged.[23]

First, we examine the language added by Statutes 1997, chapter 912 as subdivision (c). This subdivision does not actually require any new activities of school districts, nor were any allegations included with specificity in the original test claim filing. Activities from subdivision (c) were proposed at the parameters and guidelines phase, but were ultimately denied by the Commission because the specific activities were not pled at the test claim phase, and no determination was made in the 1998 Statement of Decision.[24] For completeness, the subdivision will be examined here. The provision begins: "It is the intent of the Legislature that schools *make a concerted effort to* notify parents of the purpose of the school accountability report cards ..." [Emphasis added.] The plain meaning of "make a concerted effort to" is not the same as "shall," which the Legislature could have expressed simply by using the word "shall."[25] Any notification activities regarding the School Accountability Report Card contained in Education Code section 33126 are merely discretionary or precatory in nature -- if an activity may be performed at the option of the school district, there is no state mandate.[26] Explicit publication requirements for the School Accountability Report Card were established in Proposition 98, and remain good law in Education Code section 35256.[27]

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[22] *Id.* at pages 44-45.

[23] *Id.* at page 45.

[24] June 25, 1998 Hearing, Proposed Parameters and Guidelines, Staff Analysis. (AR, p. 286.)

[25] The word "shall" is used in subdivisions (a) and (b), but not in subdivision (c). "Of course, when different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended." *People v. Jones* (1988) 46 Cal.3d 585, 596.

[26] *Kern High School District, supra,* 30 Cal.4th 727, 742.

[27] Education Code section 35256, as added by Proposition 98, requires that: "(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request."

Education Code section 33126, as amended by Statutes 1997, chapter 912, also altered the express language of some of the School Accountability Report Card data elements originally required by Proposition 98. For the reconsideration directed by SB 512, the Commission must determine whether the portions of Education Code section 33126, subdivision (b), as amended by Statutes 1997, chapter 912, are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise "necessary to implement, reasonably within the scope of" the original initiative. Intent to *change* the law must not be presumed by an amendment. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][28]

Proposition 98, "The Classroom Instructional Improvement and Accountability Act," was adopted by the voters in 1988. The initial statement of "Purpose and Intent" declared, in part, "The People of the State of California find and declare that:"

> (e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

Proposition 98, section 13, provides: "No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." (Emphasis added.) Statutes 1997, chapter 912 was passed by a two-thirds vote of the Legislature and signed by the Governor.[29] The statute also affirmatively states: "The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[30] The Commission must presume legislative amendments to the requirements for the School Accountability Report Card are constitutionally valid,[31] and thus any amendments must further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a "new program."

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[28] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[29] Bill history found at <http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0551-0600/ab_572_bill_19971012_history.html> (Stats. 1997, ch. 912) [as of Nov. 1, 2005.]

[30] AR, page 77.

[31] Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

Regarding the data amendments from Statutes 1997 chapter 912, the original claimants agreed that any requirements "to include the original thirteen components listed in Proposition 98 do not impose a reimbursable state-mandated new program," since this falls squarely within the long-standing exception to costs mandated by the state articulated in Government Code section 17556, subdivision (f). However, there was no comparison made between the original 13 data elements explicitly established in Proposition 98, and the amendments of 1997. In the test claim filing, all amendments to the precise language of Education Code section 33126 were alleged to impose a new program or higher level of service, and costs mandated by the state.

Proposition 98 requires "every local school board to prepare a School Accountability Report Card to guarantee accountability." A system that allowed every school to decide what standards to use to provide such information would not allow the public to make meaningful comparisons or "guarantee accountability." For example, the original requirement to provide information on "(b)(1) student achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals," now specifies which test results are to be provided to establish such achievement and progress. This provides a mechanism to allow comparisons between School Accountability Report Cards, while still providing the same basic information required by Proposition 98.

The same is true for the other changes to subdivision (b), as amended by Statutes 1997, chapter 912. For another example, in subdivision (b)(2), the original requirement that the School Accountability Report Card describe "(2) Progress toward reducing dropout rates," was amended to specify that this includes "the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period." Staff finds that these types of clarifications, although not "expressly included" in the original language of the initiative, are "duties that are necessary to implement" or "reasonably within the scope of," "a ballot measure approved by the voters in a statewide or local election." (Gov. Code, § 17556, subd. (f).) Therefore, the Commission finds that even if a higher level of service was successfully established for any of the amendments to Education Code section 33126, subdivision (b) by Statutes 1997, chapter 912, no costs mandated by the state can be found due to the limitations established by Government Code section 17556, subdivision (f).

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. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required.

The court found:

> 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 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.
>
> [¶]...[¶]
>
> [M]erely 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.

Finally, the court concluded (*id.*, at p. 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 [the test claim legislation].

Likewise here, by amending a few data components in the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." In exercising its jurisdiction to decide test claims, the Commission must follow precedential judicial decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court's published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, "Key Statewide Averages Fiscal Year 2001-02"[32] demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,[33] and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) "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.)

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

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[32] At <http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp> [as of Nov. 1, 2005.]

[33] Over $31 billion for fiscal year 2001-2002.

> 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 ... program, we nevertheless conclude that under the circumstances here presented, *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*. [Emphasis added.]

(*Department of Finance v. Commission on State Mandates, supra,* 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, staff concludes that state funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a separate and independent ground, the test claim legislation does not impose costs mandated by the state.

Thus, for the reasons stated above, the Commission finds that Statutes 1997, chapter 912, as it amended Education Code section 33126, does not impose a new program or higher level of service, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Statutes 2005, chapter 677, section 53:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005 for purposes of establishing the reimbursement period for the revised parameters and guidelines.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Attachment H

IN RE RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463; Statutes 1992, Chapter 759; Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824; Statutes 1997, Chapter 918 Filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants Reconsideration Directed by Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), As Amended by Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512)	Case No. 04-RL-9721-11, 05-RL-9721-03 *School Accountability Report Cards* **ORDER TO SET ASIDE THE ORDER SETTING ASIDE THE PARAMETERS AND GUIDELINES** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statements of Decision on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Card),* on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached documents:

- Order adopted on January 26, 2006, to set aside the parameters and guidelines in *School Accountability Report Cards* (04-RL-9721-11, 05-RL-9721-03)

Dated: _____

_____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409 and 41409.3 as added by Statutes 1989, Chapter 1463; Statutes 1992, Chapter 759; Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824; Statutes 1997, Chapter 912; Statutes 1997, Chapter 918; And filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants Directed by Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), as amended by Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512).	No. 97-TC-21 (05-RL-9721-03) *School Accountability Report Cards* ORDER TO SET ASIDE PARAMETERS AND GUIDELINES PURSUANT TO STATUTES 2004, CHAPTER 895, SECTION 18 (ASSEM. BILL NO. 2855) AND STATUTES 2005, CHAPTER 677, SECTION 53 (SEN. BILL NO. 512) *(Adopted on January 26, 2006)*

ORDER TO SET ASIDE PARAMETERS AND GUIDELINES

In 1998, the Commission adopted a Statement of Decision approving the *School Accountability Report Cards* test claim (97-TC-21) as a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. This test claim was filed on statutory amendments to the Proposition 98 requirements for a School Accountability Report Card.

Proposition 98, The Classroom Instructional Improvement and Accountability Act, was enacted by the voters in 1988 and provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. The attached parameters and guidelines were adopted on August 20, 1998, and have a reimbursement period beginning July 1, 1996, and January 1, 1998, as specified.

Statutes 2004, chapter 895, section 18 (Assem. Bill No. 2855) directed the Commission to reconsider its prior final decision and parameters and guidelines on the *School Accountability Report Cards* program (97-TC-21). Section 18 of the bill states the following:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
>
> (a) Chapter 1463 of the Statutes of 1989.
>
> (b) Chapter 759 of the Statutes of 1992.
>
> (c) Chapter 1031 of the Statutes of 1993.
>
> (d) Chapter 824 of the Statutes of 1994.
>
> (e) Chapter 918 of the Statutes of 1997.

Statutes 1997, chapter 912 was part of the original test claim decision, but was not included in Assembly Bill 2855.

On July 28, 2005, the Commission adopted a Statement of Decision on reconsideration of *School Accountability Report Cards* (04-RL-9721-11), as directed by Assembly Bill 2855. The Commission concluded that Education Code sections 33126, 35256.1, 35258, 41409, and 41409.3, as added or amended by Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918, do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556. The Commission further determined it did not have the authority to rehear the portion of the original decision pertaining to activities required by Statutes 1997, chapter 912.

The Legislature subsequently amended Assembly Bill 2855, through Statutes 2005, chapter 677, section 53 (Sen. Bill No. 512 urgency, operative Oct. 7, 2005), to direct the Commission to reconsider Statutes 1997, chapter 912, and to apply its decision on reconsideration of the entire *School Accountability Report Cards* to claims filed beginning January 1, 2005. Section 53 of Senate Bill 512 states the following (changes indicated in underline and strikethrough):

> Section 18 of Chapter 895 of the Statutes of 2004 is amended to read:
>
> Sec. 18. (a) Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, <u>for paragraphs (1) to (5), inclusive, and on or before January 31, 2006, for paragraph (6),</u> reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes, <u>particularly</u> in light of federal and state statutes enacted and state court decisions rendered since these statutes were enacted:

~~(a)~~(1) Chapter 1463 of the Statutes of 1989.
~~(b)~~(2) Chapter 759 of the Statutes of 1992.
~~(c)~~(3) Chapter 1031 of the Statutes of 1993.
~~(d)~~(4) Chapter 824 of the Statutes of 1994.
~~(e)~~(5) Chapter 918 of the Statutes of 1997.
(6) Chapter 912 of the Statutes of 1997.

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

(c) Notwithstanding any other provision of law, the parameters and guidelines associated with the test claim of 97-TC-21 shall be adjusted to conform to the decision of the Commission on State Mandates on its reconsiderations.

On January 26, 2006, the Commission adopted a Statement of Decision on reconsideration of Statutes 1997, chapter 912, as directed by Senate Bill 512 (05-RL-9721-03). The Commission concluded that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Senate Bill 512:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus, the Commission concluded that both the July 28, 2005 Statement of Decision on *School Accountability Report Cards* (04-RL-9721-11), and the January 26, 2006 Statement of Decision adopted pursuant to Senate Bill 512 (05-RL-9721-03), shall apply retroactively to January 1, 2005. Accordingly, as of January 1, 2005, school districts are not entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution under the *School Accountability Report Cards* test claim (97-TC-21).

In accordance with Assembly Bill 2855 and Senate Bill 512, the Commission hereby sets aside the attached parameters and guidelines, adopted August 20, 1998, for the *School Accountability Report Cards* test claim (97-TC-21). This order to set aside the parameters and guidelines shall be operative on January 1, 2005.

Dated: February 1, 2006

Paula Higashi

PAULA HIGASHI, Executive Director

Attachment: Parameters and Guidelines

Set Aside: January 1, 2005
Adopted: August 20, 1998
File Number: 97-TC-21
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PARAMETERS AND GUIDELINES

Chapter 918, Statutes of 1997
Chapter 912, Statutes of 1997
Chapter 824, Statutes of 1994
Chapter 1031, Statutes of 1993
Chapter 759, Statutes of 1992
Chapter 1463, Statutes of 1989

Education Code Section 33126
Education Code Section 35256
Education Code Section 35256.1
Education Code Section 35258
Education Code Section 41409
Education Code Section 41409.3

School Accountability Report Cards

I. SUMMARY OF THE MANDATE

Proposition 98, an initiative measure approved by the California voters, required each school in each school district to develop and issue a school accountability report cards. Proposition 98 set forth thirteen items that were to be included in the school accountability report cards. Statutes adopted after the approval of Proposition 98 added new subjects to be included in the school accountability report card. The Commission on State Mandates, in its Statement of Decision adopted at the April 23, 1998 hearing, determined that the requirements in these statutes impose a new programs or higher levels of service upon school districts, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed by the claimants on December 31, 1997. Therefore, all costs incurred on or after July 1, 1996, for Chapters 824 /1994, 1031/1993, 759/1992, and 1463/1989 are eligible for reimbursement, and, all costs incurred on or after January 1, 1998, for Chapters 912/1997 and 918/1997 are eligible for reimbursement, pursuant to these parameters and guidelines.

Actual costs for one fiscal year should be included in each reimbursement claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409 and 41409.3 as added by Chapter 918, Statutes of 1997, et al. Filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants.	No. CSM 97-TC-21 *School Accountability Report Cards* **ORDER TO REINSTATE STATEMENT OF DECISION IN CSM 97-TC-21** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statements of Decision on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Card),* on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Statement of Decision in *School Accountability Report Cards* (97-TC-21), adopted on April 23, 1998

Dated: _____

_____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409 and 41409.3 as added by Chapter 918, Statutes of 1997, et al. And filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants.	NO. 97-TC-21 *School Accountability Report Cards* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. Adopted on April 23, 1998

STATEMENT OF DECISION

The Commission on State Mandates (Commission) on April 23, 1998, heard this test claim during a regularly scheduled hearing. Mr. Wayne Stapley and Dr. Dale Russell appeared for the Bakersfield City School District, Mr. Lawrence Hendee appeared for Sweetwater Union High School District, Mr. James A. Cunningham appeared for San Diego Unified School District, Dr. Carol Berg appeared for Education Mandated Cost Network, and Mr. James Apps appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 7-0 approved this test claim.

Issue

Do the provisions of the test claim legislation on school accountability report cards, impose a new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514?

Prior Law

School accountability report cards were added to the Education Code on November 8, 1988, when California voters approved Proposition 98. Among other things, Proposition 98 added sections 33126 and 35256 to the Education Code. Section 33126 sets forth the following requirements:

- the Superintendent of Public Instruction is to prepare a model school accountability report card to be adopted by the Board of Education as the statewide model by March 1, 1989; and
- the model shall include, but is not limited to, assessment of thirteen school elements.

Section 35256 sets forth the following requirements:

- the school accountability report card shall include, but is not limited to, the conditions listed in section 33126;
- the governing board of each school district shall, triennially, compare the school district's card to the model; and
- the school district shall prepare and issue school accountability report cards for each school in the school district.

Test Claim Legislation

Chapter 1463, Statutes of 1989, added sections 35256.1 and 41409.3 to the Education Code. Together, these sections require school districts to add information on salaries paid to teachers, school site principals, and school district superintendents to the district's school accountability report card. In addition, these sections require school districts to include information pertaining to certain statewide salary averages and percentages of salaries to total school budget in the district's report card.

Chapter 759, Statutes of 1992, amended Education Code section 41409 to require the Superintendent of Public Instruction to report the statewide salary information based upon a comparison of total expenditures rather than total school budget. This information is to be provided by the Superintendent of Public Instruction to school districts for inclusion in their school accountability report cards.

Chapter 1031, Statutes of 1993, added subsection (14) to Education Code section 33126. Subsection (14) requires school districts to report "the degree to which pupils are prepared to enter the work force."

Chapter 824, Statutes of 1994, added subsections (15) and (16) to Education Code section 33216. Subsection (15) requires school districts to report "[t]he total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level." Subsection (16) requires school districts to report "[t]he total number of minimum days, . . . , in the school year."

Chapter 912, Statutes of 1997, made numerous amendments to Education Code section 33126. Under Chapter 912, Statutes of 1997, school districts are now required to include the following information in their school accountability report cards:

- results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment (§ 33126, subd. (b)(1));
- for schools with high school seniors, the average verbal and math Scholastic Assessment Test scores to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period (§ 33126, subd. (b)(1));
- the one-year dropout rate for the schoolsite over the most recent three-year period (§ 33126, subd. (b)(2));
- the distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period (§ 33126, subd. (b)(4));
- the total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period (§ 33126, subd. (b)(5));
- any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period (§ 33126, subd. (b)(5));
- the annual number of schooldays dedicated to staff development for the most recent three-year period (§ 33126, subd. (b)(10)); and
- the suspension and expulsion rates for the most recent three-year period (§ 33126, subd. (b)(11)).

Chapter 918, Statutes of 1997, added section 35258 to the Education Code. Section 35258 requires those school districts that are connected to the Internet to make their school accountability report card available on the Internet and to update the information annually.

Commission Findings

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental 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. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation.[1] Finally, the newly required activity or increased level of service must be state mandated.[2]

The Commission found that the thirteen elements that are found in Proposition 98 are not reimbursable, because those activities fell under the exception in Government Code section 17556, subdivision (f).[3]

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[1] Mr. James A. Cunningham testified that the Claimant disagrees with this interpretation of the *Lucia Mar* holding. Mr. Cunningham stated that although the same conclusion can be reached, the Claimant does not agree with the analysis or interpretation of the case law in this decision.

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

[3] Government Code section 17756. Findings. reads, "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: . . . (f)

The Commission found that Chapter 1463, Statutes of 1989, added sections 35256.1 and 41409.3 to the Education Code requiring school districts to add information on salaries paid to teachers, school site principals, and school district superintendents to the district's school accountability report card. In addition, the Commission found these sections require school districts to include information on certain statewide salary averages and percentages of salaries to total school budget in the district's report card.

The Commission found that Chapter 759, Statutes of 1992, amended Education Code section 41409 to require school districts to include statewide salary information which is provided to school districts by the Superintendent of Public Instruction for inclusion in their school accountability report cards.

The Commission found that Chapter 1031, Statutes of 1993, added subsection (14) to Education Code section 33126 which requires school districts to report "the degree to which pupils are prepared to enter the work force."

The Commission found that Chapter 824, Statutes of 1994, added subsections (15) and (16) to Education Code section 33216. Subsection (15) requires school districts to report "[t]he total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level." Subsection (16) requires school districts to report "[t]he total number of minimum days, . . . , in the school year."

The Commission found that Chapter 912, Statutes of 1997, amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:

- results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment (§ 33126, subd. (b)(1));[4]
- for schools with high school seniors, the average verbal and math Scholastic Assessment Test scores to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period (§ 33126, subd. (b)(1));
- the one-year dropout rate for the schoolsite over the most recent three-year period (§ 33126, subd. (b)(2));
- the distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period (§ 33126 subd. (b)(4));
- the total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period (§ 33126, subd. (b)(5));

The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide election."

[4] All section references are to the Education Code unless otherwise stated.

- any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period (§ 33126, subd. (b)(5));
- the annual number of schooldays dedicated to staff development for the most recent three-year period (§ 33126, subd. (b)(10)); and
- the suspension and expulsion rates for the most recent three-year period (§ 33126, subd. (b)(11)).

The Commission found that Chapter 918, Statutes of 1997, added section 35258 to the Education Code requiring those school districts that are connected to the Internet to make their school accountability report card available on the Internet and to update the information annually.

The Commission found costs incurred by a school district before the operative date of a statute are not reimbursable. The Commission found that the operative date for the 1997 statutes is January 1, 1998, not October 12, 1997, the date the legislation was signed by the Governor.[5] Therefore, the Commission found reimbursement for the 1997 statutes begins on January 1, 1998.[6]

Conclusion

The Commission concludes that Chapter 1463, Statutes of 1989 (adding Education Code sections 35256.1 and 41409.3), Chapter 759, Statutes of 1992 (amending Education Code section 41409), Chapter 1031, Statutes of 1993 (adding subsection 14 to Education Code section 33126), Chapter 824, Statutes of 1994 (adding subsections 15 and 16 to Education Code section 33126), Chapter 912, Statutes of 1997 (amending Education Code section 33126), and Chapter 918, Statutes of 1997 (adding Education Code section 35258), impose 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 and Government Code section 17514.

The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.

The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:

- Salaries paid to schoolteachers, school site principals, and school district superintendents.
- Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.

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[5] The Commission found Government Code section 17565 applies to the present test claim. Government Code section 17565 states "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."

[6] The claimants did not agree with this finding. Mr. Lawrence Hendee and Mr. James A. Cunningham testified that the reimbursement period for these items should begin on October 12, 1997, the date the Governor signed the bill into law. Claimants contended that school districts implemented these activities upon signing of the bill by the Governor and therefore, should be reimbursed from that date.

- "The degree to which pupils are prepared to enter the work force."
- "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
- "The total number of minimum days, . . . , in the school year."
- Salary information provided by the Superintendent of Public Instruction.

The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIMS ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463; Statutes 1992, Chapter 759; Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824; Statutes 1997, Chapter 918 Filed on December 31, 1997; By Bakersfield City School District and Sweetwater Union High School District, Co-Claimants.	No. CSM 97-TC-21 *School Accountability Report Cards* **ORDER TO REINSTATE PARAMETERS AND GUIDELINES IN CSM 97-TC-21** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statements of Decision on Reconsideration adopted in Proceeding 97-TC-21 (*School Accountability Report Card),* on July 28, 2005 and January 26, 2006, in their entirety, and the order to set aside the parameters and guidelines as a result of the July 28, 2005 and January 26, 2006, decisions, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Parameters and Guidelines in *School Accountability Report Cards* (97-TC-21), adopted on August 20, 1998

Dated: _____

_____

PAULA HIGASHI, Executive Director

Adopted: August 20, 1998
File Number: 97-TC-21
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PARAMETERS AND GUIDELINES

Chapter 918, Statutes of 1997
Chapter 912, Statutes of 1997
Chapter 824, Statutes of 1994
Chapter 1031, Statutes of 1993
Chapter 759, Statutes of 1992
Chapter 1463, Statutes of 1989

Education Code Section 33126
Education Code Section 35256
Education Code Section 35256.1
Education Code Section 35258
Education Code Section 41409
Education Code Section 41409.3

School Accountability Report Cards

I. SUMMARY OF THE MANDATE

Proposition 98, an initiative measure approved by the California voters, required each school in each school district to develop and issue a school accountability report card. Proposition 98 set forth thirteen items that were to be included in the school accountability report cards. Statutes adopted after the approval of Proposition 98 added new subjects to be included in the school accountability report card. The Commission on State Mandates, in its Statement of Decision adopted at the April 23, 1998 hearing, determined that the requirements in these statutes impose a new program or higher level of service upon school districts, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed by the claimants on December 31, 1997. Therefore, all costs incurred on or after July 1, 1996, for Chapters 824 /1994, 1031/1993, 759/1992, and 1463/1989 are eligible for reimbursement, and, all costs incurred on or after January 1, 1998, for Chapters 912/1997 and 918/1997 are eligible for reimbursement, pursuant to these parameters and guidelines.

Actual costs for one fiscal year should be included in each reimbursement claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section

17561 (d) (1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, travel, and training incurred for compliance with the following mandate components are eligible for reimbursement:

Component 1 - Compilation, Analysis, and Reporting of Data

The collection and updating of data, preparation of analyses, and the preparation of the new mandated provisions added to the school accountability report cards (SARCs), as described below can be claimed:

For the period beginning July 1, 1996 the required data and analyses includes the reporting of the following information:

1. The degree to which pupils are prepared to enter the workforce;
2. The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level;
3. The total number of minimum days, as specified in Education Code sections 46112, 46113, 46117, and 46141, in the school year;
4. The beginning, median, and highest salary paid to teachers in the district, as reflected in the district's salary scale;
5. The average salary for school site principals in the district;
6. The salary of the district superintendent;
7. Based upon the state summary information provided by the Superintendent of Public Instruction pursuant to subdivision (b) of Education Code section 41409, the statewide average salary for the appropriate size and type of district for the following:

   a. beginning, mid-range, and highest salary paid to teachers;

   b. school site principals; and

   c. district superintendents;
8. The statewide average of the percentage of school district expenditures allocated for the salaries of administrative personnel for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction pursuant to subdivision (a) of section 41409 of the Education Code;
9. The percentage allocated under the district's corresponding fiscal year expenditure for the salaries of administrative personnel, as defined in Education Code sections 1200, 1300, 1700, 1800, and 2200 of the California School Accounting Manual published by the State Department of Education;

10. The statewide average of the percentage of school district expenditures allocated for the salaries of teachers for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction, pursuant to subdivision (a) of Section 41409 of the Education Code; and,
11. The percentage of the budget that is expended for the salaries of teachers, as defined in Section 1100 of the California School Accounting Manual published by the State Department of Education.

For the period beginning January 1, 1998, the required data and analyses includes the reporting of the eleven items above plus the following district-wide and site-specific information:

1. Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including the pupil achievement by grade level as measured by the statewide assessment developed by the state pursuant to chapter 5 (commencing with section 60600) and chapter 6 (commencing with section 60800) of part 33 of the Education Code;
2. The average verbal and math Scholastic Assessment Test scores of high school seniors to the extent such scores are provided to the school and the average percentage of seniors taking that exam for the most recent three-year period;
3. The one-year dropout rate listed in the California Basic Education Data System for the school site over the most recent three-year period;
4. The distribution of class sizes at the school site by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to chapter 6.10 (commencing with section 52120) of part 28 of the Education Code, using California Basic Education Data System information for the most recent three-year period;
5. The total number of the school's credentialed teachers, the number of teachers relying upon emergency credentials, and the number of teachers working without credentials for the most recent three-year period;
6. Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period;
7. The annual number of schooldays dedicated to staff development for the most recent three-year period; and,
8. The suspension and expulsion rates for the most recent three-year period.

Component 2 - Annual posting of school accountability report cards on the Internet.

A school district is connected to the Internet if one or more of its schools or the administrative office has a dedicated line or a dial-up account to the Internet. These school districts are eligible for reimbursement, as follows:

A. School districts with district or individual school web sites are eligible to be reimbursed for the following activities in compliance with this mandate:

1. One-time costs to add web pages for each school to the district web site or individual school web sites to post school accountability report card (SARC) information. School districts are eligible to claim *one-time* costs to add web pages for *new schools* on subsequent claims.
2. Ongoing costs to annually convert the SARC information described in Component 1 to formats capable of being posted on the district's web site or on individual school web sites.
3. Ongoing costs to annually post the SARC information on the district's web site or on individual school web sites.
4. Ongoing costs to maintain electronic media storage space for the district's web site and individual school sites for posting the SARC information.
5. On-going costs to purchase software specifically to convert the SARC to a file format capable of being posted on the Internet.
6. One-time costs to purchase other software limited to a pro rata portion of newly purchased software used to prepare the SARC.

B. School districts without web sites on January 1, 1998, are eligible to be reimbursed for the following activities in compliance with this mandate:

1. One-time costs to establish one web site for the district to post the SARC information described in Component 1.
2. One-time costs to develop and add web pages to post SARC information for each school. School districts are eligible to claim *one-time* costs to add web pages for *new schools* on subsequent claims.
3. Ongoing costs to convert the SARC information to formats capable of being posted on the district's web site or on individual school web sites.
4. Ongoing costs to annually post SARC information on the district's web site or on individual school web sites.
5. Ongoing costs to maintain electronic media storage space for the district's web site and individual school web sites for posting the SARC information.
6. On-going costs to purchase software specifically to convert the SARC to a file format capable of being posted on the Internet.
7. One-time costs to purchase other software, limited to a pro rata portion of newly purchased software used to prepare the SARC.

Non-Reimbursable Costs

School districts shall not be reimbursed for establishing an Internet connection nor for maintaining Internet access and shall not be reimbursed for the establishment of web sites for individual schools.

V. CLAIM PREPARATION

Each reimbursement claim for costs incurred to comply with this mandate must be timely filed and set forth a listing of each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified according to the two components of reimbursable activity described in Section IV of this document.

Supporting Documentation

Claimed costs should be supported by the following information:

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities, or functions.

1. Employee Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the mandated functions performed by each employee and specify the time devoted to each function by each employee, productive hourly rate and the related fringe benefits. The average number of hours devoted to each reimbursable activity in these Parameters and Guidelines can be claimed if supported by a documented time study.

Reimbursement for personal services includes compensation for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and employer's contribution for social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

List cost of materials and supplies which have been consumed or expended specifically for the purpose of this mandate. The cost of materials and supplies, which is not used exclusively for the mandate is limited to the pro rata portion used to comply with this mandate.

3. Contracted Services

Provide the name(s) of the contractor(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities, if applicable, show the inclusive dates when services were performed, and itemize all costs for those services. For fixed price contracts

list only the activities performed, the dates services were performed, and the contract price.

4. Equipment

List the purchase price paid for equipment and other capital assets acquired for this mandate. Purchase price includes taxes, delivery costs, and installation costs. If the equipment or other capital asset is used for purposes other than this mandate, only the pro rata purchase price can be claimed.

5. Travel

Travel expenses for mileage, transportation, per diem, lodging, parking, and other employee entitlements are reimbursable in accordance with the rules of the local school district. Provide the name(s) of the person(s) traveling, purpose of the travel, inclusive dates and time of travel, destination(s), and travel expenses.

6. Training

The cost of training for activities specified in Section IV can be claimed. Identify the employee(s) by name and job classification. Provide the name of the training session, the dates attended and the location. Reimbursement costs include, but are not limited to, salaries and benefits of personnel conducting or attending the training, registration fees, and travel expenses.

B. Indirect Costs

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.
2. County offices of education must use the J- 580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the Sate Department of Education.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets to show evidence of the validity of costs. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim was filed or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of the initial payment of the claim. These documents must be made available to the State Controller's Office on request.

VII. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller's claiming instructions shall include a request for claimants to send an additional copy of the completed test claim specific form for each of the initial years' reimbursement claims by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, Facsimile Number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

IX. REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459 Claim Nos. CSM 4204 & 4485 Reconsideration Directed by Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138) Effective July 1, 2006	No. 05-RL-4204-02 (CSM 4204 & 4485) *Mandate Reimbursement Process* **ORDER TO SET ASIDE STATEMENT OF DECISION ON RECONSIDERATION** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Statement of Decision on Reconsideration in *Mandate Reimbursement Process* No. 05-RL-4204-02 (CSM 4204 & 4485), adopted on May 25, 2006

_____ Dated: _____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR COMMISSION DECISION ON: Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459 Claim Nos. CSM 4204 & 4485 Directed by Statutes 2005, Chapter 72, Section 17 (Assem. Bill No. 138) Effective July 1, 2006	No. 05-RL-4204-02 (CSM 4204 & 4485) *Mandate Reimbursement Process* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on May 25, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 25, 2006. Abe Hajela appeared on behalf of School Innovations and Advocacy, representing, ACSA, CASBO, San Francisco, Palos Verdes, Pomona, and St. Helena Unified School Districts, and San Bernardino and San Diego County Offices of Education. Allan Burdick and Juliana Gmur, Maximus, appeared on behalf of the City of Newport Beach. Leonard Kaye appeared on behalf of the County of Los Angeles. David Scribner, Scribner Consulting Group, Inc., appeared on behalf of the Grant Joint Union High School District. Susan Geanacou appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 4 to 3.

Summary of Findings

The Commission finds that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution.

The Commission also finds that, effective July 1, 2006, Statutes 1984, chapter 1459 does not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Mandate Reimbursement Process* Statement of Decision (Nos. 4204 & 4485) and parameters and guidelines.

Therefore, the Commission hereby denies the *Mandate Reimbursement Process* test claim, (Nos. 4204 & 4485), effective July 1, 2006.

BACKGROUND

Statutes 2005, chapter 72, section 17 (AB 138) directs the Commission to reconsider whether the *Mandate Reimbursement Process* mandate constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, as follows:

> (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202[1] on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006.

The Test Claim Statutes

Statutes 1975, chapter 486 and Statutes 1984, chapter 1459 established the reimbursement process for state mandated programs. Chapter 486 was enacted four years before article XIII B, section 6, much of which was based on the provisions in the Revenue and Taxation Code.[2] Chapter 1459, on the other hand, is a legislative implementation of article XIII B, section 6.[3] Chapter 486 established the reimbursement process before the Board of Control (Rev. & Tax Code, § 2240 et seq.), while chapter 1459 established the reimbursement process before the Commission on State Mandates (Gov. Code, § 17500 et seq.). Government Code section 17500, until amended by Statutes 2004, chapter 890, made it clear that the legislature's purpose was "to

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[1] Although the actual numbers for this claim are CSM 4204 and 4485, the legislative intent of this section is evident because the bill contains the name of the program and the citation to Statutes 1975, chapter 486, and Statutes 1984, chapter 1459.

[2] A number of former Revenue and Taxation Code sections predate article XIII B, section 6 and even the 1975 test claim statute: for example, those added or amended by Statutes 1972, chapter 1406, Statutes 1973, chapter 358, and Statutes 1974, chapter 457.

[3] Government Code section 17500 et seq. is the legislative implementation of article XIII B, section 6. *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal. App. 4th 976, 984.

consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution."

Chapter 486 added articles 3 and 3.5 to Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code. Section 2250 in chapter 3.5 states:

> 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 2229, 2230 or 2231 and by Article 3 (commencing with Section 2240).

Similarly, chapter 1459,[4] requires the Commission to hear and decide claims, and provides the "sole and exclusive procedure" by which local agencies or school districts may claim reimbursement.[5]

Commission Statement of Decision and Parameters and Guidelines

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that the test claim statutes impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines,[6] determining that the following activities are reimbursable:

> A. Scope of the Mandate
>
> Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.
>
> B. Reimbursable Activities—Test Claims
>
> All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

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[4] Government Code sections 17550 and 17551.

[5] Government Code section 17552.

[6] See pages 229-230 of the Administrative Record.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

The phrase, "including court responses, if an adverse Commission ruling is later reversed" under heading "B" above was amended out in March 1987 and replaced with "including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order." (See Administrative Record, p. 229).

In addition to this March 1987 amendment, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims.[7] Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997),[8] 1997 (amended Sept. 1997),[9] 1998 (amended Oct. 1998),[10] 1999 (amended Sept. 1999),[11] 2000 (amended Sept. 2000),[12] 2001 (amended Oct. 2001),[13] 2002 (amended Feb. 2003),[14] 2003 (amended Sept. 2003),[15] 2004 (amended Dec. 2004),[16] and 2005

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[7] Administrative Record, page 295 et seq. (especially pp. 302-303).

[8] Administrative Record, pages 355-426, especially page 425.

[9] Administrative Record, pages 427-473.

[10] Administrative Record, pages 477-551. This amendment also removed the cap on claims for legal costs, so that those costs would be claimed under the contracted services provision.

[11] Administrative Record, pages 569-678. This amendment also updated text to conform with 1998 amendments to the Commission's statutory scheme, updated parameters and guidelines text, and included reimbursement for participation in Commission workshops.

[12] Administrative Record, pages 679-736.

[13] Administrative Record, pages 737-763.

[14] Administrative Record, pages 781-904.

[15] Administrative Record, pages 905-986.

(amended Sept. 2005).[17] In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

State Agency Position

No state agencies submitted comments on this reconsideration. The comments of the state parties in the original test claim are in the Administrative Record (pp. 29-32 & 127-130).

Local Entity Positions

County of Los Angeles

The County of Los Angeles, ("Los Angeles") in comments submitted December 22, 2005, argues that section 6 of article XIII B of the California Constitution does not prohibit reimbursing claiming costs for allowable state mandated programs, and states it is "the only way that the State has established to meet its constitutional obligation to local governments." Los Angeles also reiterates the County of Fresno's ("Fresno" the original claimant) argument that the state has chosen, from other alternatives, a costly claiming procedure for meeting its obligation under article XIII B, section 6 thereby making the preparation and processing of claims a mandate on the state and local government. Los Angeles repeats the findings in the original statement of decision, as well as Fresno's arguments that the claims reimbursement process is not a voluntary one. Los Angeles quotes from *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876 to point out that mandate reimbursement processing required under the test claim legislation is a mandatory program, and that no federal law is implicated. Los Angeles also asserts that the mandate reimbursement process ("MRP") is an administrative one that must be exhausted before litigation, and that the original SB 90 legislation was a state-local partnership. According to Los Angeles, if reimbursement is excluded for the MRP, the original intent of SB 90 is violated because local agencies are no longer protected from state mandates. Finally, Los Angeles cites *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, which states "Unsupported legislative disclaimers are insufficient to defeat reimbursement" and "The Legislature cannot limit a constitutional right." Los Angeles attaches a declaration that, among other things, claiming costs are well in excess of $1000 annually.

City of Newport Beach

On December 23, 2005, the City of Newport Beach ("Newport Beach") also filed comments, the gist of which is that "the activities of the MRP program were properly found by the Commission to be reimbursable state-mandated activities within the meaning of Article XIII B, section 6, of the California Constitution and the recent case law does nothing to disturb that initial decision."

As to the argument that the mandate reimbursement process predated 1975, Newport Beach asserts that the claiming process is far more complex and involves far more resources than is described in former Revenue and Taxation Code section 2164.3. Further, Newport Beach states

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[16] Administrative Record, pages 987-1044.

[17] Administrative Record, pages 1045-1106.

that MRP is part and parcel of each individual state-mandated program, and the new program or higher level of service at issue can be found in the compliance with the new claiming instructions. Thus, the date that the underlying program is established is also the date the MRP portion of that program is established, so the MRP mandate is not the result of a statute enacted before 1975. As to whether the MRP is "reasonably within the scope" of an initiative (Proposition 4, which established article XIII B , section 6) Newport Beach cites the history of Propositions 13 and 4, concluding that the MRP process "is not necessary to implement, nor is even conceivably within the scope of duties necessary to implement the constitutional provisions enacted by the people." Newport Beach also notes that the present claiming instructions consist of 633 pages of forms and instructions for local governments to claim reimbursement, alleging that "... the administrative process was not adopted by the people with the passage of Proposition 9 [sic] which enacted Article XIIIB, Section 6. ... The people of the State of California did not envision this sort of process when it enacted Article XIIIB, section 6."

Newport Beach also states that the MRP program is not voluntary. After discussing *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859 and *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, Newport Beach distinguishes *City of Merced* and states, "Once the state embarked on creating the administrative process currently in place, the claimants are bound to follow it – failure to do so results in a loss of the constitutionally guaranteed reimbursement."

In comments on the draft staff analysis submitted March 17, 2006, Newport Beach again cites the *San Diego Unified School Dist.* case, arguing that the essence of its direction is to "look to the intention of the Legislature and the voters before applying a rule of law to ensure that the intent is not thwarted." According to Newport Beach, the proposed application of Government Code section 17556, subdivision (f), in the draft staff analysis "impermissibly limits local government's constitutional right to reimbursement" and "interferes with local government contracts for the provision of services attendant to MRP... [which is] barred by the Contracts Clause of the U.S. Constitution." Newport Beach also asserts that staff's application of Government Code section 17556, subdivision (f) violates the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. Newport Beach alleges that the Legislature's enactment of AB 138 circumvents the law by causing a review of a decision two decades later, which review is barred by res judicata and collateral estoppel. Thus, Newport Beach contends that the proper challenge to the original MRP decision was by writ of mandate, which was never filed.

Grant Joint Union High School District

On March 10, 2006, the Grant Joint Union High School District ("Grant") submitted comments on the draft staff analysis. Grant argues that the draft staff analysis' conclusion fails to strictly construe article XIII B, section 6, is not supported by the plain meaning rule, and fails to meet the intent behind the enactment of Proposition 4. Grant's comments review the history of Proposition 4, emphasizing language in the voter pamphlet that the measure "will not allow the state government to force programs on local governments without the state paying for them." According to Grant, article XIII B, section 6 and the Proposition 4 ballot pamphlet address the activities the state must perform regarding subvention for mandates, and are silent as to activities

the local government must perform. Thus, Grant argues that only the sections in the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that impose activities on the state, not local government, are necessary to implement and reasonably within the scope of article XIII B, section 6. Grant also argues that the portions of Government Code section 17500 et seq. that impose on local government any part of the state's burden to provide a subvention of funds exceeds the voters' mandate to the state and article XIII B, section 6.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[18] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[19] "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."[20] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[21]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[22]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

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[18] Article XIII B, section 6, subdivision (a), (as amended in November 2004) 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 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.

[19] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[20] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[21] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[22] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.[23] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[24] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[25]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[26]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[27] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[28]

Issue 1: Commission jurisdiction and effective date of decision.

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission's jurisdiction in this case is based solely on Statutes 2005, chapter 72, the reconsideration statute. Absent this statute, the Commission would have no jurisdiction to review and reconsider its decision on MRP since the decision was adopted and issued well over 30 days ago.[29]

Thus, the Commission must act within the jurisdiction granted by Statutes 2005, chapter 72, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[30] Since an action by the Commission is void if its action is in excess of the

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

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[25] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

[27] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[28] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[29] Government Code section 17559.

[30] *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

powers conferred by statute, the Commission must narrowly construe the provisions of Statutes 2005, chapter 72 and review this test claim "in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted."

Section 17 of chapter 72 of Statutes 2005, as cited above, includes the following: "Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006." Local agencies and school districts have incurred costs in preparing claims that are currently pending before the Commission. Thus, in order to avoid retroactive application of the statute,[31] the Commission finds that this decision on reconsideration applies to any costs incurred pursuant to Statutes 1984, chapter 1459, on or after July 1, 2006.

In comments on the draft staff analysis, Newport Beach argues that the test claim statute violates principles of res judicata and collateral estoppel. Newport Beach states, "The Legislature, acting through A.B. 138 seeks to interject itself into the Commission process well after the process has resolved an issue. ... And in so doing, the Legislature circumvents the law and does what no party to the test claim can do – cause a review of a decision two decades later."

The Commission disagrees. Although res judicata and collateral estoppel are jurisdictional issues that would, if found, prohibit a court or agency from rehearing a matter or issue, they do not apply here. One court explained these concepts as follows:

> The doctrine of res judicata is composed of two parts: claim preclusion and issue preclusion. Claim preclusion prohibits a party from relitigating a previously adjudicated cause of action; thus, a new lawsuit on the same cause of action is entirely barred. [Citations omitted.] Issue preclusion, or collateral estoppel, applies to a subsequent suit between the parties on a different cause of action. Collateral estoppel prevents the parties from relitigating any *issue* which was actually litigated and finally decided in the earlier action. [Citations omitted.] The issue decided in the earlier proceeding must be identical to the one presented in the subsequent action. If there is any doubt, collateral estoppel will not apply.[32]

Res judicata and collateral estoppel do not apply to this reconsideration. First, the issues in the prior test claim are not identical with those in this reconsideration. The issue in this reconsideration that did not exist in the original test claim is whether the claim is reimbursable "in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted." The Commission's decision in this claim is prospective only, and because the issues here involve law enacted subsequent to the original claim (an issue the original claim could not have addressed) the issues are not identical to those in the original decision. Specifically, this case considers the 2005 amendment to Government Code section 17556, subdivision (f), which is discussed below. There is nothing to prevent the Legislature from directing the Commission to prospectively reconsider a prior decision.

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[31] *McClung v. Employment Development Department* (2004) 34 Cal. 4th 467, 475.

[32] *Flynn v. Gorton* (1989) 207 Cal.App. 3d 1550, 1554.

Not limited to a prospective statute, the Legislature can also enact a retroactive statute to supersede or modify res judicata. For example, in *Mueller v. Walker,*[33] the court awarded the husband his military pension benefits as his separate property in the divorce judgment, in accordance with a 1981 U.S. Supreme Court case. The Legislature, reacting to a time gap in federal law (between the case and a superseding federal statute) regarding distribution of military retirement benefits, enacted Civil Code section 5124 (eff. Jan. 1, 1984). This statute retroactively allows court modification of a community property settlement, judgment or decree, to include military retirement benefits. The husband argued that the California statue was unconstitutional or did not apply. The court disagreed, finding that:

> [B]y positive act the Legislature has superseded and modified the preclusive effect of the doctrine of res judicata or collateral estoppel as applied to military retirement benefits in decrees or judgments or settlements which became final in the specified time frame. [¶]...[¶] Thus, the Legislature may modify the doctrine of res judicata, allow relitigation, for reasonable public policy grounds or other "rational bas[es]s. [Citations omitted.][34]

Although the statute at issue in the case is not retroactive as was the statute at issue in *Mueller*, the principle that the Legislature can supersede or modify res judicata applies to this reconsideration just as it did in *Mueller*. Therefore, the Commission has jurisdiction, based on Statutes 2005, chapter 72 (AB 138), to review this test claim.

Issue 2: Do the test claim statutes impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[35] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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.

The test claim statutes in the former Revenue and Taxation Code sections (enacted by Stats. 1975, ch. 486) were repealed by Statutes 1986, chapter 879, so the Commission finds that they are not subject to article XIII B, section 6 of the California Constitution.

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[33] *Mueller v. Walker* (1985) 167 Cal.App. 3d 600, 607.

[34] *Id.* at page 607. Another court said that the Legislature may do this because res judicata and collateral estoppel are not generally considered constitutional rules. *People v. Carmony* (2002) 99 Cal.App.4th 317, 325-326.

[35] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

As to the other test claim statute, Statutes 1984, chapter 1459, the issue is whether Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, AB 138, eff. Jul.19.2005.), applies to it, which 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 that: [¶]...[¶]
>
> (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.

The Commission finds that this section applies to Statutes 1984, chapter 1459; and thus, the test claim legislation does not impose 'costs mandated by the state' within the meaning of Government Code section 17556.

Article XIII B, section 6 is a Constitutional initiative enacted in 1979 by Proposition 4. In interpreting the Constitution and Government Code section 17556, subdivision (f), it is important to remember the following:

> In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: ... [A]ll 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.[36]

And one court called Government Code section 17556 a legislative interpretation of section 6.[37]

Government Code section 17500 et seq. (Stats. 1984, ch. 1459, an original test claim statute) was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent "in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution." Thus, Statutes 1984, chapter 1459 meets the standard of section 17556, subdivision (f), in that it is "necessary to implement [and] reasonably within the scope of" article XIII B, section 6.

Newport Beach argues that the mandate reimbursement process "is not necessary to implement, nor is even conceivably within the scope of duties necessary to implement the constitutional provisions enacted by the people." Citing that the present claiming instructions consist of 633

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[36] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 180.

[37] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 984.

pages of forms and instructions, Newport Beach states, "the administrative process was not adopted by the people with the passage of Proposition 9 [sic] which enacted Article XIIIB, Section 6. ... The people of the State of California did not envision this sort of process when it enacted Article XIIIB, section 6."

The Commission disagrees. The voters who adopted Proposition 4 are deemed aware of the prior administrative process in the Revenue and Taxation Code (former § 2201 et seq.) that directed reimbursement claims.[38] A reimbursement process was in place from after 1972, when S.B. 90 was adopted (Stats. 1972, ch. 1406) until 1986, when the Revenue and Taxation Code statutory scheme was repealed (Stats. 1986, ch. 879). In fact, the California Supreme Court recently stated that former Revenue and Taxation Code sections 2231 and 2207 "apparently had served as the model for the constitutional provision."[39] In 1990, the same court said, "the procedures [after repeal of Rev. & Tax Code, § 2201 et seq.] for administrative and judicial determination of subvention disputes remain functionally similar."[40] Thus, whatever alternatives the Legislature had when enacting the test claim statutes are irrelevant, so long as the statutes fall within Government Code section 17556, subdivision (f): they are "necessary to implement [or] reasonably within the scope of" the Constitutional initiative that includes article XIII B, section 6.

Newport Beach also contends that Government Code section 17556, subdivision (f), is unconstitutional because it impermissibly limits local reimbursement and violates the contracts clause and due process clause of the Fourteenth Amendment. The Commission cannot find section 17556, subdivision (f) unconstitutional because article III, section 3.5 of the California Constitution prohibits a state agency from doing so. Thus, the Commission must follow Government Code section 17556, subdivision (f) as it stands.

As summarized above, Grant's comments emphasize language in the Proposition 4 voter pamphlet that the measure "will not allow the state government to force programs on local governments without the state paying for them." According to Grant, the conclusion that the test claim statute meets the standard of Government Code section 17556, subdivision (f), fails to strictly construe the Constitution. Grant argues that because article XIII B, section 6 and the Proposition 4 ballot pamphlet address the activities the state must perform regarding subvention for mandates, and are silent as to activities the local government must perform, the only sections of the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that impose activities on the state, and not local government, are necessary to implement and reasonably within the scope of article XIII B, section 6. Grant states that to hold otherwise fails to strictly construe article XIII B, section 6 and violates the plain meaning rule. Grant also argues that the portions of Government Code section 17500 et seq. that impose on local government any part of the state's

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[38] *In re Harris* (1989) 49 Cal. 3d 131, 136. According to *Williams v. County of San Joaquin* (1990) 225 Cal. App. 3d 1326, 1332, the Legislature and electorate "are conclusively presumed to have enacted the new laws in light of existing laws that have a direct bearing on them."

[39] *Kern High School Dist., supra,* 30 Cal.4th 727, 738.

[40] *City of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 62, fn. 5.

burden to provide a subvention of funds exceeds the voters' mandate to the state and article XIII B, section 6.

The Commission disagrees. First, Grant misconstrues strict construction. "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."[41] Thus, since the process by which mandate reimbursement or subvention occurs is not expressly stated in article XIII B, section 6, strict construction of section 6 cannot restrict the "legislative powers" to enact Government Code section 17500 et seq. to implement the constitutional provision. These powers include enacting and amending Government Code section 17556, subdivision (f) that excludes from reimbursement a "statute ... [that] 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." As one appellate court has said, section 17556 is a legislative interpretation of article XIII B, section 6.[42]

Prior to Proposition 4's adoption in 1979, former Revenue and Taxation Code section 2253.2, subdivision (b)(4) prohibited the Board of Control from considering any claim if "The chaptered bill imposed duties which were expressly approved by a majority of the voters of the state through the initiative process." (Stats. 1977, ch. 1135). As preexisting law, the voters were presumed to know of this restriction and presumed to have enacted Proposition 4 in light of it.[43] This reimbursement restriction was made part of Government Code section 17556 by Statutes 1984, chapter 1489, and was amended into its current form by Statutes 2005, chapter 72. Thus, the voters intended to exclude voter initiatives from reimbursement when enacting Proposition 4 because of the presumption of voter awareness of the preexisting statutory scheme.[44] It is not within the Commission's power to ignore section 17556, as amended.[45]

As to Grant's attempt to restrict Government Code section 17500 et seq., by saying that section 17556, subdivision (f)'s language only applies to sections in the statutory scheme that impose requirements on the state, the Commission disagrees. The Legislature makes no such distinction, as section 17500 states:

> The Legislature finds and declares that ... 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** [Part 7 of

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[41] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 985. [Emphasis added.]

[42] *Id.* at page 984.

[43] *In re Harris, surpa,* 49 Cal. 3d 131, 136.

[44] *Ibid. Williams v. County of San Joaquin, supra,* 225 Cal. App. 3d 1326, 1332.

[45] California Constitution, article III, section 3.5.

Division 4 of Title 2 of the Government Code] to provide for the implementation of Section 6 of Article XIII B of the California Constitution. [Emphasis added.]

As declared by the Legislature, the entire process in part 4 (Gov. Code, § 17500 et seq.) is necessary to implement the constitutional provision enacted by Proposition 4, not merely those sections that impose requirements on the state. The California Supreme Court has said, "The administrative procedures established by the Legislature ... are the exclusive means by which the state's obligations under section 6 [of article XIII B] are to be determined and enforced."[46] These procedures include section 17556, subdivision (f)'s exclusion from reimbursement those "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 ... election [Proposition 4, in this case]."

Inasmuch as Statutes 1984, chapter 1459 was enacted to implement the Constitutional initiative known as Proposition 4 that enacted article XIII B, section 6, as the Legislature expressly states in Government Code section 17500, the Commission finds that section 17556, subdivision (f), applies to this claim.

Therefore, the Commission finds that Statutes 1984, chapter 1459 does not impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

CONCLUSION

The Commission finds that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution.

The Commission also finds that effective July 1, 2006, Statutes 1984, chapter 1459 does not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Mandate Reimbursement Process* Statement of Decision (Nos. 4204 & 4485) and parameters and guidelines.

[46] *Kinlaw v. State of California, supra,* 54 Cal.3d 326, 328.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS AND GUIDELINES ON: RECONSIDERATION DIRECTED BY STATUTES 2005, CHAPTER 72, SECTION 17 (ASSEM. BILL No. 138) Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459; Statutes 1995, Chapter 303 (Budget Act of 1995); Statutes 1996, Chapter 162 (Budget Act of 1996); Statutes 1997, Chapter 282 (Budget Act of 1997); Statutes 1998, Chapter 324 (Budget Act of 1998); Statutes 1999, Chapter 50 (Budget Act of 1999); Statutes 2000, Chapter 52 (Budget Act of 2000); Statutes 2001, Chapter 106 (Budget Act of 2001); Statutes 2002, Chapter 379 (Budget Act of 2002); Statutes 2003, Chapter 1577 (Budget Act of 2003); Statutes 2004, Chapter 208 (Budget Act of 2004); Statutes 2005, Chapter 38 (Budget Act of 2005)	No. 05-RL-4204-02 (CSM 4204 & 4485) *Mandate Reimbursement Process* **ORDER TO SET ASIDE AMENDED PARAMETERS AND GUIDELINES ADOPTED JULY 28, 2006** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Amended parameters and guidelines in *Mandate Reimbursement Process* No. 05-RL-4204-02 (CSM 4204 & 4485), adopted on July 28, 2006

Dated: _____

_____
PAULA HIGASHI, Executive Director

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

As Reconsidered

Statutes 2005, Chapter 72, Section 17 (AB 138)

Mandate Reimbursement Process

[Beginning Fiscal Year 2006-2007]

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
Sixth Amendment Adopted: September 30, 1999
Seventh Amendment Adopted: September 28, 2000
Eighth Amendment Adopted: October 25, 2001
Ninth Amendment Adopted: February 27, 2003
Tenth Amendment Adopted: September 25, 2003
Eleventh Amendment Adopted: December 9, 2004
Twelfth Amendment Adopted: September 27, 2005
Thirteenth Amendment Adopted: July 28, 2006

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

Statutes 2005, chapter 72, section 17 (AB 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 in light of subsequently enacted state or federal statutes or case law. The Commission's decision is to be effective July 1, 2006, so that costs incurred up to that date would be reimbursable.

On May 25, 2006, the Commission adopted its Statement of Decision on reconsideration. The Commission determined that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution. As to the 1984 test claim statute, Government Code section 17556, subdivision (f) prohibits the Commission from finding costs mandated by the state if:

> 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.

Applying this statute, the Commission determined that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 which was enacted in Proposition 4, a ballot measure approved in a statewide election. Therefore, on reconsideration, the Commission denied the test claim, finding that the statutes do not constitute a reimbursable state mandated program, effective July 1, 2006.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

(a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

(b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

(c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.[1]

IV. REIMBURSABLE ACTIVITIES

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, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under

[1] Statutes 2006, chapter 38 (AB 1811), Item 8885-295-0001, Schedule 3, (y).

penalty of perjury under the laws of the State of California that the foregoing is true and correct, " and must further comply with the requirements of Code of Civil Procedure section 2015.5. 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.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

Claims

All costs incurred by local agencies and school districts in preparing successful claims are reimbursable, including those same costs of an unsuccessful claim if an adverse Commission ruling is later reversed as a result of a court order. A *successful* claim is one that was filed before July 1, 2006 and is heard and approved by the Commission. The reimbursable activity is limited to preparing claims filed with the Commission before July 1, 2006.

Costs incurred for presenting claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions are not reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

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[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statements of Decision are legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim and the Reconsideration. The administrative record, including the Statements of Decision, are on file with the Commission.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459 By County of Fresno, Claimant.	CSM 4204 & 4485 *Mandate Reimbursement Process* **ORDER TO REINSTATE STATEMENT OF DECISION** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Statement of Decision in *Mandate Reimbursement Process* No. 05-RL-4204-02 (CSM 4204 & 4485), adopted on April 24, 1986

Dated: _____

_____
PAULA HIGASHI, Executive Director

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	)	
	)	
County of Fresno	)	No. CSM-4204
Claimant	)	
	)	

DECISION

The attached Proposed Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on April 24, 1986.

IT IS SO ORDERED April 24, 1986.

Jesse Huff, Chairman
Commission on State Mandates

WP 1044A

BEFORE THE
COMMISSION ON STATE MANDATES

CLAIM OF: County of Fresno Claimant	No. CSM-4204

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on March 27, 1986, in Sacramento, California, during a regularly scheduled meeting of the commission. Paul Robinson, and Vincent McGraw appeared on behalf of the County of Fresno. Carol Miller appeared on behalf of the Education Mandated Cost Network. There were no other appearances.

Evidence, both oral and documentary, having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

11.

FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on November 27, 1985, by the County of Fresno.

2. The subject of the claim is Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984.

3. Chapter 486, Statutes of 1975 established the Board of Control's authority to hear and make determinations on claims submitted by local governments that alleges costs mandated by the state. In addition, Chapter 486/75 contained provisions authorizing the State Controller's Office to receive, review and pay reimbursement claims for mandated costs submitted by local governments.

4. Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandated cost claims from local governments.

5. The County of Fresno has incurred increased costs as a result of having to file test claims and reimbursement claims which are required by Chapter 486/75 and Chapter 1459/84.

6. The County of Fresno's increased costs are costs mandated by the state.

7. Government Code 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, 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.

III.

DETERMINATION OF ISSUES

1. The commission has authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 impose a reimbursable state mandate upon local government. The County of Fresno has established that these two statutes have imposed a new program and an increased level of service by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the cost of the mandated program.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS AND GUIDELINES ON: Statutes 1975, Chapter 486; Statutes 1984, Chapter 1459; Statutes 1995, Chapter 303 (Budget Act of 1995); Statutes 1996, Chapter 162 (Budget Act of 1996); Statutes 1997, Chapter 282 (Budget Act of 1997); Statutes 1998, Chapter 324 (Budget Act of 1998); Statutes 1999, Chapter 50 (Budget Act of 1999); Statutes 2000, Chapter 52 (Budget Act of 2000); Statutes 2001, Chapter 106 (Budget Act of 2001); Statutes 2002, Chapter 379 (Budget Act of 2002); Statutes 2003, Chapter 1577 (Budget Act of 2003); Statutes 2004, Chapter 208 (Budget Act of 2004); Statutes 2005, Chapter 38 (Budget Act of 2005)	No. CSM 4204 & 4485 *Mandate Reimbursement Process* **ORDER TO REINSTATE AMENDED PARAMETERS AND GUIDELINES ADOPTED SEPTEMBER 27, 2005** (*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

In accordance with the Peremptory Writ of Mandate, the Commission hereby REINSTATES the following attached document:

- Amended parameters and guidelines in *Mandate Reimbursement Process* (CSM 4204 & 4485), adopted on September 27, 2005

Dated: _____

_____
PAULA HIGASHI, Executive Director

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2005, Chapter 38 (Budget Act of 2005)

Mandate Reimbursement Process

[For fiscal year 2005-2006, these parameters and guidelines are amended, pursuant to the requirements of: provision 7 of Item 0840-001-0001 of the Budget Act of 2005 to include Appendix A.]

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
Sixth Amendment Adopted: September 30, 1999
Seventh Amendment Adopted: September 28, 2000
Eighth Amendment Adopted: October 25, 2001
Ninth Amendment Adopted: February 27, 2003
Tenth Amendment Adopted: September 25, 2003
Eleventh Amendment Adopted: December 9, 2004
Twelfth Amendment Adopted: September 27, 2005

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

(a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

(b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

(c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.[1]

IV. REIMBURSABLE ACTIVITIES

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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, " and must further comply with the requirements of Code of Civil Procedure section 2015.5. 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.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test

[1] Statutes 2005, chapter 38 (SB 77), Item 8885-295-0001, Schedule 3 (ff).

claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours).

Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without

efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[2] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be

[2] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 2005-2006[3]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation,

[3] The limitation added by the Budget Act of 2005, Statutes 2005, chapter 38, in Item 0840-001-0001, Provision 7, is shown as part A. of this Appendix.

reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	Case No.: 05-TC-05
Statutes 2004, Chapter 890 (AB 2856); Government Code Sections 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005)	*Mandate Reimbursement Process II*
Filed on September 27, 2005	**ORDER TO SET ASIDE STATEMENT OF DECISION ADOPTED OCTOBER 4, 2006**
By City of Newport Beach, Claimant.	(*Adopted September 27, 2009*)

On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

> Set aside as null and void the Statement of Decision adopted October 4, 2006 in Proceeding 05-TC-05 (*Mandate Reimbursement Process II*) in its entirety; you are further directed to commence new proceedings in that matter which are consistent with the ruling of this court, and which do not take into consideration any legislative determinations which refer to duties imposed which are "reasonably within the scope of ... a ballot measure" contained in Government Code section 17556, subdivision (f), as amended by section 7, Statutes 2005, chapter 72 (AB 138).

In accordance with the Peremptory Writ of Mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

- Statement of Decision in *Mandate Reimbursement Process II* (05-TC-05), adopted on October 4, 2006

New proceedings on this test claim will be commenced in accordance with the court's Peremptory Writ of Mandate.

PAULA HIGASHI, Executive Director

Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Statutes 2004, Chapter 890 (AB 2856); Government Code Sections 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005) Filed on September 27, 2005 By City of Newport Beach, Claimant.	Case No.: 05-TC-05 *Mandate Reimbursement Process II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on October 4, 2006*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. Juliana Gmur and Glen Everroad appeared for and represented claimant City of Newport Beach. Susan Geanacou and Carla Castañeda appeared for the Department of Finance.

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

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of four to one, with one abstention.

Summary of Findings

The Commission finds that the test claim statutes and executive orders do not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Background

The Test Claim Statutes and Executive Orders

Statutes 2004, chapter 890 amended the Government Code statutes that establish the process for seeking reimbursement for state-mandated costs under article XIII B, section 6. Although many code sections were amended by chapter 890, the claimant pled only Government Code sections 17553, 17557, and 17564, as well as California Code of Regulations, title 2, sections 1183 and 1183.13, regarding filing test claims and adopting parameters and guidelines.

Government Code section 17553 was amended by the test claim statute to incorporate the test claim filing requirements, so that a test claim filing must include the following:

- A detailed description of costs that arise from or are modified by the mandate.

- The actual increased costs incurred by the claimant during the fiscal year for which the test claim was filed.
- The actual or estimated annual costs that will be incurred to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- Identification of federal, state, and local funds dedicated for the alleged mandate.
- Declarations supporting actual or estimated costs that will be incurred, and declarations identifying all funds that will be used to offset the cost of the program.

Claimant also pled California Code of Regulations, title 2, section 1183, which was amended effective September 6, 2005, to remove most of the specific requirements for a test claim filing, which requirements were placed, in addition to others, into Government Code section 17553 by the test claim statute. Subdivision (d) of section 1183 now states, "All test claims, or amendments thereto … shall contain all of the elements and supplemental documents required by the form and statute."

The test claim statute also amended Government Code section 17557, which describes the adoption of parameters and guidelines, to add the following:

> (f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

Code of Regulations, title 2, section 1183.13, which claimant also pled, was added effective September 6, 2005, as follows:

> § 1183.13. Reasonable Reimbursement Methodology.
>
> (a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5,[1] should be considered; or if the Department of Finance,

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[1] Government Code section 17518.5, the definition of Reasonable Reimbursement Methodology, was also added by Statutes 2004, chapter 890, the test claim statute. Because it was not pled by the claimant, the Commission makes no findings on this section, which states:

(a) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

(b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated

Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

The test claim statute also amended Government Code section 17564, which addresses the minimum dollar amount ($1000) for reimbursement claims and combined reimbursement claims. Section 17564[2] was amended to add the underlined text as follows:

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines <u>and claiming instructions.</u>

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by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(c) A reasonable reimbursement methodology may be developed by any of the following:
(1) The Department of Finance. (2) The Controller. (3) An affected state agency.
(4) A claimant. (5) An interested party.

[2] All references are to the Government Code unless otherwise indicated.

Prior Commission Decisions and Parameters and Guidelines

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459 (Gov. Code, § 17500 et seq., which establish the reimbursement process before the Commission) impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines, determining that the following activities are reimbursable:

A. Scope of the Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities—Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. [**Note:** the phrase, "including court responses, if an adverse Commission ruling is later reversed" was amended out in March 1987 and replaced with "including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order."] These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

In addition to the March 1987 amendment indicated above, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims. Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997), 1997 (amended Sept. 1997), 1998 (amended Oct. 1998), 1999 (amended Sept. 1999), 2000 (amended Sept. 2000), 2001 (amended Oct. 2001), 2002 (amended Feb. 2003), 2003 (amended Sept. 2003), 2004 (amended Dec. 2004), and 2005 (amended Sept. 2005). In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

The *Mandate Reimbursement Process* mandate is suspended in the 2006 Budget for local agencies,[3] but is deferred for school districts with an appropriation of $1000.[4]

Reconsideration: Statutes 2005, chapter 72, section 17 (Assem. Bill No. 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, in light of subsequently enacted state or federal statutes or case law, and directed that the Commission's decision be effective July 1, 2006. Chapter 72 also states, "If a new test claim is filed on Chapter 890 of the Statutes of 2004, [the statute claimed in this test claim] the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202."

The Commission determined, at its May 25, 2006 hearing, that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it no longer imposes a state-mandated program. The Commission also determined that Statutes 1984, chapter 1459 no longer imposes a state-mandated program because Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, A.B. 138) prohibits the Commission from finding costs mandated by the state if "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." Finding that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 (which was enacted in Proposition 4, a ballot measure approved in a statewide election) the Commission denied the *Mandate Reimbursement Process* test claim effective July 1, 2006.

Claimant Position

Claimant alleges that the test claim statutes and regulations impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. As to Government Code section 17553, claimant pleads activities related to filing a test claim that is more detailed, including

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[3] Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 48, 2005-2006 Reg. Sess.) amending Item 8885-295-0001, Schedule (3)(y).

[4] Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 44, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4). The original budget bill (Stats. 2006, ch. 47, Assem. Bill No. 1801, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4), appropriated $13.79 million.

pleading actual costs, a review of offsets and available funding, inquiring of other jurisdictions to establish a statewide cost estimate, and calculating a reasonable reimbursement methodology. In short, claimant alleges the following activities to comply with amended section 17553:

> [I]nterviews, conferences, research and document retrieval and review sufficient to plead with specificity the new activities required, the modified activities required, actual costs, annual actual or estimated costs, a statewide cost estimate, off-sets and funding sources, and prior Commission decisions and the drafting of declarations thereon ... additional research, drafting of written responses, witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to those issues that result from the new pleading guidelines.[5]

In order to comply with amended section 17557, subdivision (f), and California Code of Regulations, title 2, section 1173.13, claimant alleges activities related to creating a reasonable reimbursement methodology, including,

> [A]ttendance at conferences ... interviews, conferences, research and document retrieval and review sufficient to research and propose, defend or rebut a reasonable reimbursement methodology; drafting of a reasonable reimbursement methodology or written responses; witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to reasonable reimbursement methodology issues; as well as mailing and services costs.[6]

As to amended section 17564, subdivision (b), which was amended to require claims to be filed "in the manner prescribed in the parameters and guidelines and claiming instructions" claimant alleged that this would increase accounting requirements making claiming a laborious process through the additional research and compilation of materials. Claimant alleged the following to comply with section 17564, subdivision (b), as amended by the test claim statute, "interviews, conferences, research, calculations and document retrieval and review sufficient to comply with the claiming instructions."[7]

On September 18, 2006, claimant submitted comments that disagreed with the draft staff analysis' recommendation that the test claim be denied, as discussed below.

State Agency Position

No state agencies submitted comments on this test claim or the draft staff analysis.

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[5] *Mandate Reimbursement Process II* test claim (05-TC-05), page 8.

[6] *Ibid.*

[7] *Ibid.*

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[8] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[9] "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."[10] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[11]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[12]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[13] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before their enactment.[14] A

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[8] Article XIII B, section 6, subdivision (a), (as amended in November 2004) 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 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.

[9] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[10] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[11] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[12] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

[14] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

"higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[15]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[16]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[17] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[18]

Issue: Do the test claim statutes and executive orders impose "costs mandated by the state" within the meaning of Article XIII B, section 6 and Government Code sections 17514 and 17556?

Article XIII B, section 6 of the California Constitution 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 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.

Pursuant to the plain language of this constitutional provision, the test claim statute must constitute a state-mandated program.[19]

Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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,

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[15] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

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

[17] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[18] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[19] *Kern High School Dist., supra,* 30 Cal.4th 727, 735. *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1581.

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.

Claimant alleges incurred costs ranging from $1500 to $36,800 to comply with the new test claim filing requirements.[20]

Reimbursement is not required, however, if any of the exceptions in Government Code section 17556 apply.

In this case, the sole issue is whether Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, Assem. Bill No. 138, eff. Jul.19, 2005) applies to the test claim statutes and executive orders. Section 17556, subdivision (f) 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 that: [¶]...[¶]
>
> (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. [Emphasis added.]

The Commission finds that this subdivision applies to the test claim statutes and executive orders so that it does not impose 'costs mandated by the state' within the meaning of article XIII B, section 6 and Government Code sections 17514 and 17556.

Article XIII B, section 6 is a Constitutional initiative enacted in 1979 by Proposition 4. In interpreting the Constitution and Government Code section 17556, subdivision (f), it is important to remember the following:

> In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: ... [A]ll 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.[21]

And one court called Government Code section 17556 a legislative interpretation of section 6.[22]

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[20] Test Claim 05-TC-05, page 10. This does not include additional costs to comply with the claiming instructions, of which claimant states: "Due to the highly speculative nature of compliance with the claiming instructions, no estimate can be made at this time." (*Id.*)

[21] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 180.

[22] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal. App. 4th 976, 984.

Government Code section 17500 et seq. was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent "in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution." Thus 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.

Since the Legislature has made this express declaration regarding Government Code section 17500 et seq., an analysis regarding whether these statutes and executive orders are "necessary to implement" or "reasonably within the scope of" article XIII B, section 6, is unnecessary.

Moreover, if the test claim statutes and executive orders are a voter mandate (or reasonably within its scope) they are not state mandates within the meaning of article XIII B, section 6.[23]

In comments on the draft staff analysis, claimant states that denial of the test claim would thwart the intent of the voters and the Legislature, as well as interfere with local government contracts for providing mandate reimbursement services, and violate the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. In response, the Commission raises the following three points.

First, the Commission is unaware of any evidence that either the Legislature or the voters contemplated reimbursement for local agencies or school districts for the act of applying for reimbursement for state-mandated programs.

Second, based on enactment of A.B. 138 (Stats. 2005, ch. 72, eff. Jul.19, 2005) in light of article XIII B, section 6 and the Commission's statutory scheme (Gov. Code § 17500 et seq.), the Commission is looking to the legislative intent in recommending that this claim be denied.

Third, in response to claimant's contracts and due process arguments, the Commission does not have the authority to declare a statute unenforceable or unconstitutional, or refuse to enforce a statute.[24] This means that the Commission is prohibited from refusing to enforce A.B. 138's amendment to Government Code section 17556, subdivision (f), based on claimant's allegations.

Since the test claim statutes and executive orders do not impose costs mandated by the state, there is no need to analyze whether they constitute a new program or higher level of service within the meaning of article XIII B, section 6.

CONCLUSION

The Commission finds that the test claim statutes and executive orders do not impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

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[23] Cf. *San Diego Unified School Dist., supra,* 33 Cal. 4th 859, 880. "[A]rticle XIII B, section 6, and the implementing statutes ... provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs."

[24] California Constitution, article III, section 3.5.