Hearing Date: October 4, 2006
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ITEM 9

TEST CLAIM
SUPPLEMENTAL STAFF ANALYSIS

Statutes 2004, Chapter 890 (AB 2856); Government Code Section 17553, 17557, and 17564; California Code of Regulations, Title 2, Sections 1183 and 1183.13

Mandate Reimbursement Process II
05-TC-05

City of Newport Beach, claimant

The draft staff analysis for this test claim was issued on July 6, 2006, with a deadline for filing comments of July 27, 2006. The final staff analysis was issued on September 14, 2006. The claimant, City of Newport Beach, filed late comments on September 18, 2006. The following discussion is a supplemental analysis to address the late filing and is to be considered in addition to the final staff analysis, not in substitution. The late filing is printed in yellow and can be found immediately following this supplemental analysis.

In its comments filed September 18, 2006, the claimant argues that staff's reliance on Government Code section 17556, subdivision (f) to decide this claim is misplaced. Claimant states that although the statute appears facially valid, staff's application of it to this test claim "raises constitutional issues and flies in the face of a recent Supreme Court decision."

Claimant quotes the *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859 case. In *San Diego Unified School Dist.*, the court considered whether the school district had a right to reimbursement for the costs of complying with Education Code section 48918, which specifies procedural requirements in effecting pupil expulsions. The school districts and amici curiae argued that the district's costs in complying with requirements that exceed federal due process requirements should be reimbursed. The Department of Finance and Commission, relying on the *Kern High School District* and *City of Merced* cases, argued that "any right to reimbursement for hearing costs triggered by discretionary expulsions—even costs limited to those procedures that assertedly exceed federal due process hearing requirements—is foreclosed" because the pupil expulsions are discretionary rather than legally compelled.

The court agreed with the districts and amici curiae in refusing to extend the *Kern* and *City of Merced* cases to the discretionary pupil expulsions at issue. Claimant quotes the *San Diego Unified* case's reasoning in refusing to extend *Kern* and *City of Merced*, and in so doing, relies on the following statement by the Supreme Court:

> We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.[1]

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[1] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887.

Claimant makes the following argument based on this quote from *San Diego Unified School Dist.*: "The essence of direction from the Court is: Look to the intention of the Legislature and the voters to [sic] before applying a rule of law to ensure that that intent is not thwarted." Then, without citation to the record, claimant states:

> [T]he intent of the voters is clearly set forth in the administrative record of the reconsideration of MRP. The intent of the program was straight forward: To ensure that the Legislature limited its spending by requiring payment of new programs be made to the local agencies who were mandated to perform the services.

The claimant did not submit any evidence of voter intent in enacting Proposition 4 (that contained article XIII B, section 6) or Proposition 1A (that amended it) as part of this test claim. Indeed, staff 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 of state-mandated programs.

More importantly, claimant fails to recognize the Legislature's intent as stated in recent amendments to the Commission's statutory scheme.

As stated in the analysis, the Legislature in A.B. 138 (Stats. 2005, ch. 72, § 17) made the following changes (in italics and strikeout) to Government Code section 17556, subdivision (f):

> 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 ~~which were~~ *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.[2] *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 Legislature is presumed to have been aware of Proposition 4 (art. XIII B, § 6) as preexisting law and is presumed to have enacted A.B. 138, the amendment to Government Code section 17556, subdivision (f), in light of the statutory scheme that has a bearing on the new law.[3] Indeed, the Legislature is also deemed aware of this preexisting provision in the Commission's statutory scheme.

> 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 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*.[4] [Emphasis added.]

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[2] The "or local" was added by Statutes 2004, chapter 895, (A.B. 2855).

[3] *In re Harris* (1989) 49 Cal.3d 131, 136.

[4] Government Code section 17500.

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. 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."[5] 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]."

Based on enactment of A.B. 138 in light of preexisting law (art. XIII B, § 6 and Gov. Code, § 17500 et seq.) the legislative intent is clear to exclude from reimbursement those state-mandated programs that "are necessary to implement, reasonably within the scope of, or expressly included in a state-wide election."[6]

Therefore, in answer to claimant's argument, staff has looked to the legislative intent before applying a rule of law to ensure that that intent is not thwarted.

Claimant also states that the Commission is empowered to act to ensure justice prevails. Claimant would confer on the Commission the powers of a court of law.

Actually, in making its decisions, the courts have said that 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."[7]

Finally, claimant argues that staff's application of section 17556, subdivision (f) would not only

> [I]mpermissibly limit local government's constitutional right to reimbursement, it also interferes with local government contracts for the provision of services attendant to MRP II. … Such encroachment into the contract rights is barred by the constitution. Moreover, staffs proposed application of section 17556, subdivision (f), violates the Due Process clause of the Fourteenth Amendment of the U.S. Constitution.

The Commission, however, does not have the authority to call into question the constitutionality of any provision in Government Code section 17556, or any other statute. Article III, section 3.5 of the California Constitution states:

> 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 it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
> (b) To declare a statute unconstitutional;

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[5] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 328.

[6] Government Code section 17556, subdivision (f).

[7] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Thus, the Commission is prohibited by the California Constitution from refusing to enforce section 17556 or from declaring it unconstitutional based on alleged violations of the contracts clause or of due process.