

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:**

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

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

California Public Records Act, 02-TC-10
and 02-TC-51

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

Filed on January 21, 2015
By Department of Finance, Requester.

Case No.: 14-MR-02

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

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

(Adopted July 24, 2015)

(Served August 4, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. Susan Geanacou and Evelyn Suess appeared on behalf of Department of Finance (Finance).

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission adopted the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of 6-0. Member Don Saylor was absent from the meeting.

SUMMARY OF THE FINDINGS

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 *California Public Records Act (CPRA)* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42,

adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.¹

COMMISSION FINDINGS

I. Chronology

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|------------|--|
| 5/26/2011 | The Commission adopted the test claim statement of decision. |
| 12/17/2012 | Commission staff corrected the test claim statement of decision. ² |
| 4/19/2013 | The Commission adopted the parameters and guidelines. |
| 7/26/2013 | The Commission corrected the parameters and guidelines. ³ |
| 6/3/2014 | The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution. ⁴ |
| 1/21/2015 | Department of Finance (Finance) filed a request for redetermination on <i>CPRA</i> , 02-TC-10 and 02-TC-51. ⁵ |
| 2/17/2015 | The State Controller's Office (Controller) submitted written comments on the redetermination request. ⁶ |
| 4/3/2015 | Commission staff issued the draft proposed decision for the first hearing on the request. ⁷ |

¹ California Constitution, article II, section 10 ["An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise."].

² Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

³ Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

⁴ Exhibit I, Text of Ballot Measure, Proposition 42, at p. 2.

⁵ Exhibit A, Request for Redetermination.

⁶ Exhibit D, Controller's Comments on Request for Redetermination filed September 26, 2014.

⁷ Exhibit E, First Hearing Draft Proposed Decision issued April 3, 2015.

- 4/23/2015 The Controller filed comments on the draft proposed decision.⁸
- 5/29/2015 Commission adopted the decision for the first hearing.⁹
- 5/29/2015 Commission staff issued the draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines.¹⁰

Background

The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.¹¹

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

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

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

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

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

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters

⁸ Exhibit F, Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

⁹Exhibit G, First Hearing Decision adopted May 29, 2015.

¹⁰ Exhibit H, Second Hearing Draft Proposed Decision issued May 29, 2015.

¹¹Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. Ongoing Activities

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

This activity includes:

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

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

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

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

This activity includes, where applicable:

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

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
 - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
 - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

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

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

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

This activity includes:

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

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

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

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

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)
 - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)¹²

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for

¹² Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”¹³

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

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.¹⁴

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”¹⁵

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”¹⁶ If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”¹⁷

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.¹⁸

B. State Controller

¹³ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁴ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

¹⁵ Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).

¹⁶ Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).

¹⁷ Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

¹⁸ Exhibit A, Request for Redetermination, at p. 1.

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”¹⁹

III. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁰ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²¹ 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.”²²

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.²³

A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a

¹⁹ Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.

²⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

²¹ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

²² *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²³ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”²⁴ Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

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

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

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

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

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

B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the

²⁴ Government Code section 17570(a)(1).

Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore *cannot* be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.²⁵ Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

Based on the foregoing, the Commission finds that the state's liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

C. The CPRA Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning June 4, 2014.

Government Code section 17570 provides that a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."²⁶ This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day.²⁷ Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

IV. Conclusion

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

²⁵ California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

²⁶ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

²⁷ California Constitution, article II, section 10.