

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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

Health and Safety Code Section 13235(a);  
As amended by Statutes 1989, Chapter 993.

*Fire Safety Inspections of Care  
Facilities, 01-TC-16*

As Alleged to be Modified by:  
Statutes 2009-2010, Chapter 12 (ABX 4 12)

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-01

*Fire Safety Inspections of Care Facilities  
(01-TC-16)*

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

*(Adopted September 26, 2014)*

*(Served October 3, 2014)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on September 26, 2014. Lee P. Scott and Michael Byrne appeared for the Department of 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 by a vote of 6-0.

**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 *Fire Safety Inspections of Care Facilities, 01-TC-16* mandate has been modified based on a subsequent change in law, and that a new test claim decision must be adopted to supersede the previously adopted test claim decision. Specifically, Statutes 2009-2010, chapter 12 (ABX 4 12) amended Health and safety Code section 13235(a) to provide local agencies with the authority to charge a fee equal to the actual cost of the mandated preinspection services. Government Code section 17556(d) proscribes a finding of costs mandated by the state where the local government has fee authority sufficient to cover the costs of the mandate. Pursuant to Government Code section 17570, the Commission approves the request for

redetermination and concludes that the *Fire Safety Inspection of Care Facilities*, 01-TC-16 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2012.

## COMMISSION FINDINGS

### I. Chronology

- 03/29/06 The Commission adopted the test claim statement of decision for *Fire Safety Inspections of Care Facilities*, 01-TC-16.<sup>1</sup>
- 03/28/08 The Commission adopted parameters and guidelines.<sup>2</sup>
- 07/29/13 Department of Finance (DOF) filed a request for redetermination on test claim 01-TC-16.<sup>3</sup>
- 08/09/13 Commission staff deemed the filing complete.
- 09/09/13 The State Controller's Office (SCO), Division of Accounting and Reporting, filed comments concurring with DOF's request for redetermination.
- 05/16/14 Commission staff issued the draft staff analysis for the first hearing.
- 07/25/14 The Commission adopted the decision for the first hearing<sup>4</sup>, directing Commission staff to set the matter for the second hearing.
- 07/29/14 Commission staff issued the draft proposed decision<sup>5</sup> for the second hearing and the draft expedited amendment to parameters and guidelines.
- 08/19/14 SCO, Division of Accounting and Reporting filed comments concurring with the draft expedited parameters and guidelines.
- 09/26/14 The Commission adopted the decision to adopt the new test claim.

### II. Background

#### Health and Safety Code Section 13235(a) and Test Claim Decision

Statutes 1989, chapter 993 amended section 13235. The purpose of the amendments was to ensure that community care facilities, residential care facilities for the elderly, and child care facilities, during the process of being licensed by the State Department of Social Services, timely receive correct fire clearance information from the local fire enforcing agency or the State Fire Marshal. Upon receipt of a request from a prospective licensee, the local fire department or State Fire Marshal, whichever has primary jurisdiction, is required to conduct a preinspection of the facility prior to the fire clearance approval. At the time of preinspection, the applicable fire

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<sup>1</sup> Exhibit B, Test Claim 01-TC-16 Statement of Decision.

<sup>2</sup> Exhibit C, Test Claim 01-TC-16 Parameters and Guidelines.

<sup>3</sup> Exhibit A, Request for Redetermination, filed July 29, 2013.

<sup>4</sup> Exhibit E, Decision, First Hearing.

<sup>5</sup> Exhibit F, Draft Proposed Decision, Second Hearing.

enforcing agency will provide consultation and interpretation of the fire safety regulations that are to be enforced in order to obtain the clearances necessary to obtain a license.

On March 29, 2006, the Commission adopted the decision for the *Fire Safety Inspections of Care Facilities* test claim.<sup>6</sup> The Commission found that Health and Safety Code section 13235(a), constituted a new program or higher level of service and imposes a state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the Californian Constitution and Government Code section 17514.

The Commission approved the test claim for the following reimbursable activities relating to the preinspection of the facility:

1. The preinspection of community care facilities, residential care facilities for the elderly, and child day care facilities;
2. The consultation and interpretation of applicable fire safety regulations for the prospective facility licensee; and
3. Written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.<sup>7</sup>

At the time of the test claim decision, Health and Safety Code section 13235(a), specifically allowed the following fees to be charged for the preinspection of a facility: 1) not more than \$50 for a facility serving 25 or fewer persons; and 2) not more than \$100 for a facility serving more than 25 persons. In the test claim Statement of Decision for this program, the Commission found that this limited fee authority did not cover the actual cost of the program and identified it as offsetting revenue.<sup>8</sup>

Health and Safety Code section 13235(a) was amended as follows, in underline and strikeout to provide:

A fee of not more than fifty dollars (\$50) equal to, but not exceeding, the actual cost of the preinspection services may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee ~~of not more than one hundred dollars (\$100) equal to, but not exceeding, the actual cost of the preinspection services~~ may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.<sup>9</sup>

As amended, section 13235(a) provides fee authority for the full actual cost of preinspection services.

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<sup>6</sup> Exhibit B, Test Claim 01-TC-16 Statement of Decision.

<sup>7</sup> Exhibit B, Test Claim 01-TC-16 Statement of Decision, p. 13.

<sup>8</sup> Exhibit B, Test Claim 01-TC-16 Statement of Decision, pp.12-13.

<sup>9</sup> Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session, chapter 12 (AB 12), section 14, effective July 28, 2009.

## 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 modified the state's liability for reimbursement. Section 17570 calls for a two hearing process; at the first hearing, the requestor must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6, (a) of the California Constitution."<sup>10</sup> At the second hearing, the Commission "shall consider whether the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring the adoption of a new test claim decision to supersede the previously adopted test claim decision."<sup>11</sup>

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 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>12</sup>

If the Commission finds, at the second hearing, that the state's liability has been modified based upon a subsequent change in law, "it shall adopt a new decision that reflects the modified liability of the state."<sup>13</sup> If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission shall amend existing parameters and guidelines pursuant to Section 17557.<sup>14</sup>

### **III. Position of the Parties**

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

DOF asserts that Statutes 2009-2010, chapter 12 (ABX 4 12) constitutes a subsequent change in the law, as defined in section 17570, which, when analyzed in light of section 17556, results in the state's liability under the test claim statutes being modified. DOF asserts that the amendment to section 13235(a) "provides authority to charge fees sufficient to cover the full costs of the mandated activities in the Fire Safety Inspection Program." Therefore the state is no longer

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<sup>10</sup> California Code of Regulations, title 2, section 1190.5(a)(1).

<sup>11</sup> California Code of Regulations, title 2, section 1190.5(b)(1).

<sup>12</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>13</sup> California Code of Regulations, Title 2, section 1190.5(b)(1).

<sup>14</sup> Government Code section 17570(i) (Stats. 2010, chapter 719 (S.B. 856)).

obligated to reimburse any costs for the mandated activities, pursuant to Government Code sections 17570 and 17556(d).<sup>15</sup>

#### **B State Controller's Office**

The SCO filed comments concurring with the DOF request for redetermination. The SCO also filed comments concurring with the draft expedited amendment to parameters and guidelines.

#### **IV. Discussion**

Under 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. In order 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.<sup>16</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>17</sup> 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."<sup>18</sup>

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

#### **A. Statutes 2009-2010, Chapter 12 Constitutes a Subsequent Change in Law.**

On March 29, 2006, the Commission adopted a test claim decision for the *Fire Safety Inspections of Care Facilities* test claim 01-TC-16.<sup>19</sup> The Commission found that Health and Safety Code section 13235(a), added by Statutes 1989, chapter 993 imposed a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On March 28, 2008, the

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<sup>15</sup> Exhibit A, Request for Redetermination, filed July 29, 2013 at p. 6.

<sup>16</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

<sup>17</sup> *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

<sup>18</sup> *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.

<sup>19</sup> Exhibit B, Test Claim 01-TC-16 Statement of Decision.

Commission adopted parameters and guidelines which outlined the reimbursable activities as follows:

A. One-Time Activity (one time per employee)

Training for each new fire inspector assigned to preinspection of care facilities, pursuant to Health and Safety Code section 13235, subdivision (a). A maximum of four hours of training is allowable per employee.

B. Ongoing Activities

1. Conduct preinspections of community care facilities, residential care facilities for the elderly, and child day care facilities upon receipt of a request from a prospective licensee of such a facility, before final fire clearance approval. More than one preinspection per facility as deemed necessary by the local fire agency is reimbursable.
2. Provide consultation and interpretation of applicable fire safety regulations for the prospective facility licensee.
3. Provide a written notice to the prospective licensee of the specific fire safety regulations that shall be enforced in order to obtain the final fire clearance approval.
4. Maintain files relating solely to preinspection activities pursuant to Health and Safety Code section 13235, subdivision (a).<sup>20</sup>

Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session, chapter 12 (AB 12), effective July 28, 2009, amended section 13235(a) to provide as follows in strikeout and underline:

(a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire safety regulations, and shall notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval. A fee ~~of not more than fifty dollars (\$50)~~ equal to, but not exceeding, the actual cost of the preinspection services may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee ~~of not more than one hundred dollars (\$100)~~ equal to, but not exceeding, the actual cost of the preinspection services may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.<sup>21</sup>

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<sup>20</sup> Exhibit C, 01-TC-16, Parameters and Guidelines, adopted March 28, 2008, pp. 2-3.

<sup>21</sup> Health and Safety Code section 13235(a), amended by Statutes 2009-2010 4<sup>th</sup> Extraordinary session, chapter 12 (AB 12), § 14, effective July 28, 2009.

In its request for mandate redetermination,<sup>22</sup> DOF asserts that the amendment of Health and Safety Code section 13235(a) granted local agencies authority to “charge a fee sufficient to cover all of the costs attributable to the mandated activities under Health and Safety Code section 13235, subdivision (a).”<sup>23</sup> As sufficient fee authority has been provided, DOF maintains that a new test claim decision must issue finding there are no costs mandated by the state pursuant to Government Code section 17556(d). DOF asserts that the amendment to section 13235(a) is a “subsequent change in law” as defined in Government Code section 17570.<sup>24</sup>

**B. Section 17556(d) is Not Self-Executing, but Requires Commission Action Pursuant to Section 17570, Where a Commission Decision on the Test Claim Statutes has been Previously adopted.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds that “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556(d), in *County of Fresno v. State of California*.<sup>25</sup> The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>26</sup>

Accordingly, in *Clovis Unified School District v. Chiang*, the court found that the SCO was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court noted that the concept underlying the state mandates

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<sup>22</sup> Exhibit A, Request for Redetermination, filed July 29, 2013, p. 6.

<sup>23</sup> Exhibit A, Request for Redetermination, filed July 29, 2013, p. 6.

<sup>24</sup> Exhibit A, Request for Redetermination, filed July 29, 2013, p. 6.

<sup>25</sup> *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

<sup>26</sup> *Id.*, at p. 487.

process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”<sup>27</sup> The court further noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>28</sup>

Section 17556(d) further provides that the limitation “applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued. In the context of fee authority enacted *after the test claim decision* on the subject matter has been adopted, an analysis under section 17556(d) cannot be entertained absent the redetermination process provided in section 17570. The Commission’s process is the sole and exclusive venue in which eligible claimants vindicate the reimbursement requirement of article XIII B, section 6, and the Commission’s decision on a test claim is final and binding, absent judicial review.<sup>29</sup> A later-enacted statute providing fee authority for a mandated program cannot, of its own force, undermine the Commission’s mandate determination in a prior test claim decision. Section 17570 thus provides the mechanism for considering section 17556(d) when there is a subsequent change in law, as defined, “material to the prior test claim decision, that may modify the state’s liability” pursuant to article XIII B, section 6.

“Subsequent change in law,” is defined in section 17570(a)(2) 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.<sup>30</sup>

Here, the amendments effected by Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session , chapter 12 (AB 12), authorize local fire enforcing agencies to charge a fee “equal to, but not exceeding the actual cost of the preinspection service”, implicate a section 17556(d) analysis, and therefore the amendments constitute a subsequent change in law, as defined.

Based on the foregoing, the Commission finds that there are no costs mandated by the state, as defined in section 17514, under Health and Safety Code section 13235(a), as amended by Statutes 2009-2010, chapter 12 (ABX 4 12). Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on

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<sup>27</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

<sup>28</sup> *Ibid.*

<sup>29</sup> *CSBA I, supra*, 171 Cal.App.4th 1183, at pp. 1199-1200.

<sup>30</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

July 29, 2013, establishing eligibility beginning July 1, 2012. Therefore, the activities approved for reimbursement in the prior test claim decision are no longer reimbursable as of July 1, 2012.

**V. CONCLUSION**

Based on the foregoing, the Commission approves the request for redetermination and concludes that the *Fire Safety Inspection of Care Facilities*, 01-TC-16 program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(d), beginning July 1, 2012.

**COMMISSION ON STATE MANDATES**

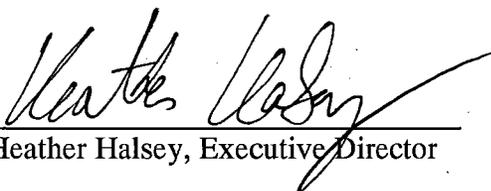
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Re: **Adopted Decision**

Mandate Redetermination Request, 13-MR-01  
Second Hearing: New Test Claim Decision  
*Fire Safety Inspections of Care Facilities, (01-TC-16)*  
Health and Safety Code Section 13235(a); Statutes 1989, Chapter 993  
As Alleged to be Modified by Statutes 2009-2010, Chapter 12 (ABX4 12)  
Department of Finance, Requester

On September 26, 2014, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

  
Heather Halsey, Executive Director

Dated: October 3, 2014