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 attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

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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The Commission finds that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution.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

[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
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> 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.

[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

[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: [¶]…[¶]
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> (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.