

Hearing: April 26, 1994  
File Number: CSM-4433  
Staff: Steve Zimmerman  
g:\sfz\bussafe\stmtdec.pro

PROPOSED STATEMENT OF DECISION  
ADOPTED MANDATE  
Education Code Section 39831.5  
Vehicle Code Section 22122, Subdivision (c), Subpart (3)  
Chapter 624, Statutes of 1992  
Schoolbus Safety

---

Executive Summary

The Commission on State Mandates at its hearing of February 24, 1994, determined that a reimbursable state mandated program exists under provisions of Education Code section 39831.5, and Vehicle Code section 22122, subdivision (c), subpart (3), enacted by Chapter 624, Statutes of 1992. In addition, the Commission determined that other changes made by Education Code section 39831.5, of Chapter 624, Statutes of 1992, do not impose a reimbursable state mandated program upon school districts.

Member Shuman moved to adopt the staff recommendation to find that Education Code section 39831.5 and Vehicle Code section 22112, subdivision (c), subpart (3), as amended by Chapter 624, Statutes of 1992, impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514, by requiring school districts to give pupils safety instruction for other than home to school transportation, document safety instruction given, retain the information documented as specified, by requiring schoolbus drivers to use a handheld "STOP" sign when escorting pupils across a highway or private road, and providing for the reasonable and legally necessary storage of such signs when not in use. Member Richardson seconded the motion. The vote on the motion was unanimous. The motion carried.

Staff has prepared the attached proposed statement of decision which identifies the basis for the Commission's decision.

---

1  
2 BEFORE THE  
3 COMMISSION ON STATE MANDATES  
4 STATE OF CALIFORNIA

5 )  
6 Claim of: )

7 San Jose )  
8 Unified School District, )

9 Claimant )  
10 )

No, CSM-4433  
Education Code  
Section 39831.5  
Vehicle Code  
Section 22122, Subdivision (c),  
Subpart (3)  
Chapter 624, Statutes of 1992  
Schoolbus Safety

11  
12 PROPOSED STATEMENT OF DECISION

13 This claim was heard by the Commission on State Mandates  
14 (Commission) on February 24, 1994, in Sacramento, California,  
15 during a regularly scheduled hearing.

16  
17 Mr. William Doyle and Ms. Carol Miller appeared on behalf of the  
18 San Jose Unified School District, Mr. Allan Burdick appeared on  
19 behalf of the California State Association of Counties, and  
20 Mr. Jim Apps appeared on behalf of the Department of Finance.

21 Evidence both oral and documentary having been introduced, the  
22 matter submitted, and vote taken, the Commission finds:

23  
24 ISSUE

25 Do the provisions of Education Code section 39831.5 and Vehicle  
26 Code section 22122, subdivision (c), subpart (3), of Chapter 624,  
27 Statutes of 1992, require school districts to implement a new  
28 program or provide a higher level of service in an existing

1 program, within the meaning of section 6, article XIII B of the  
2 California Constitution and Government Code section 17514?

3  
4 BACKGROUND AND FINDINGS OF FACT

5  
6 The test claim was filed with the Commission on August 20, 1993, by  
7 the San Jose Unified School District.

8  
9 The elements for filing a test claim, as specified in section 1183  
10 of Title 2 of the California Code of Regulations, were satisfied.

11  
12 Chapter 624, Statutes of 1992 added Education Code section 39831.5,  
13 as follows:

14 "(a) All pupils at the elementary and secondary level in  
15 public or private school who are transported in a  
16 schoolbus or school pupil activity bus shall receive  
17 instruction in schoolbus emergency procedure and  
18 passenger safety. The county superintendent of schools,  
19 superintendent of the school district, or owner/operator  
20 of a private school, as applicable, shall ensure that the  
21 instruction is provided as follows:

22 "(1) At least once in each school year, all pupils in  
23 prekindergarten, kindergarten, and grades 1 to 8,  
24 inclusive, who receive home-to-school transportation  
25 shall receive safety instruction which includes, but is  
26 not limited to; proper loading and unloading procedures,  
27 including escorting by the driver, proper passenger  
28 conduct, bus evacuation, and location of emergency  
equipment. Instruction also may include responsibilities  
of passengers seated next to an emergency exit. As part  
of the instruction, pupils shall evacuate the schoolbus  
through emergency exit doors.

"(2) Prior to departure on a school activity trip, all  
pupils riding on a schoolbus or school pupil activity bus  
shall receive safety instruction which includes, but is  
not limited to, location of emergency exits, and location  
and use of emergency equipment. Instruction also may  
include responsibilities of passengers seated next to an  
emergency exit.

1 "(b) The following information shall be documented each  
2 time the instruction required by paragraph (1) of  
subdivision (a) is given:

3 "(1) Name of school district, county office of  
education, or private school.

4 "(2) Name and location of school.

5 "(3) Date of instruction.

6 "(4) Names of supervising adults.

7 "(5) Number of pupils participating.

8 "(6) Grade levels of pupils.

9 "(7) Subjects covered in instruction.

10 "(8) Amount of time taken for instruction.

11 "(9) Bus driver's name.

12 "(10) Bus number.

13 "(11) Additional remarks.

14 "The information recorded pursuant to this subdivision  
15 shall remain on file at the district or county office, or  
16 at the school, for one year from the date of the  
17 instruction, and shall be subject to inspection by the  
18 Department of the California Highway Patrol."

19 The Commission observed that, prior to enactment of Education Code  
20 section 39831.5, Title 5, California Code of Regulations,  
21 section 14102, stated:

22 "Section 14102. Bus Evacuation Instruction.

23 Each school year, the governing board shall provide, and  
24 require each pupil who is transported from home to school  
25 in a school bus to receive, appropriate instruction in  
26 safe riding practices and emergency bus evacuation  
27 drills."

28 After comparing the requirements of Education Code section 39831.5,  
subdivision (a), subpart (I), to the pre-existing requirements  
established by Title 5, California Code of Regulations,  
section 14102, the Commission found that the provisions of  
Education Code section 39831.5, subdivision (a), subpart (1),  
provide a clarification of the requirements of Title 5, California  
Code of Regulations, section 14102.

//

1 The Commission found that two things were required to be provided  
2 to specified pupils by Title 5, California Code of Regulations,  
3 section 14102, and that these were "appropriate instruction in safe  
4 riding practices" and "emergency bus evacuation drills? The  
5 Commission found that Education Code section 39831.5;  
6 subdivision (a), subpart (1), by describing specific topics which  
7 must be covered and permitting the inclusion of additional topics,  
8 clarified the prior requirement for "appropriate instruction in  
9 safe riding practices", but did not expand it.

10  
11 The Commission found that Title 5, California Code of Regulations,  
12 section 14255, which established the initial requirement for  
13 emergency bus evacuation drills, stated that specified pupils  
14 "shall participate in emergency bus evacuation drills", and that,  
15 while Title 5, California Code of Regulations, section 14255 was  
16 superseded by Title 5, California Code of Regulations,  
17 section 14102, that the intent that pupils participate was implicit  
18 in the term "drill". The Commission therefore found that the  
19 requirement under Education Code section 39831.5 that, as part of  
20 the instruction, pupils shall evacuate the schoolbus through  
21 emergency exit doors, is a clarification of the requirement that  
22 specified pupils receive "emergency bus evacuation drills" required  
23 by Title 5, California Code of Regulations, section 14102, and does  
24 not expand the prior requirement.

25  
26 The Commission therefore found that the required safety instruction  
27 under Education Code section 39831.5, subdivision (a), subpart (1),  
28 is substantially the same as the safety instruction previously

1 required under Title 5, California Code of Regulations,  
2 section 14102.

3  
4 Regarding Education Code section 39831.5, subdivision (a),  
5 subpart (2), the Commission noted these statutory provisions  
6 address safety instruction to be given to pupils on school activity  
7 trips, as opposed to safety instruction required for home to school  
8 trips.

9  
10 The Commission found no pre-existing requirement to provide safety  
11 instruction to pupils on school activity trips and, accordingly,  
12 the Commission found that the safety instruction under Education  
13 Code section 39831.5, subdivision (a), subpart (2), is a new  
14 requirement, but is very limited in scope.

15  
16 The claimant alleged that Chapter 624, Statutes of 1992 requires  
17 school districts to train instructors to prepare schoolbus drivers  
18 to give the newly required safety instruction, to train district-  
19 employed schoolbus drivers to give the newly required safety  
20 instruction, and to obtain materials needed to train the schoolbus  
21 drivers and to use in giving the newly required safety instruction.

22  
23 The Commission found no statutory requirement for the school  
24 district to train instructors to train the schoolbus drivers or to  
25 train the schoolbus drivers themselves. Further, the Commission  
26 found that a certified schoolbus driver or certified school pupil  
27 activity bus driver will have the knowledge needed to give the  
28 safety instruction required by Education Code section 39831.5,

1 subdivision (a), subpart (2). Such a certified driver will not  
2 require additional training to be able to point out the location of  
3 emergency exit doors or the location and use of emergency  
4 equipment.

5  
6 Further, the Commission found that Education Code section 39831.5,  
7 subdivision (a), subparts (1) and (2), contains no requirement that  
8 materials be used to train schoolbus drivers or in giving safety  
9 instruction, as specified.

10  
11 Regarding Education Code section 39831.5, subdivision (b), the  
12 Commission recognized that this statute requires specified  
13 information to be documented each time the annual safety  
14 instruction is given to pupils pursuant to Education Code  
15 section 39831.5, subdivision (a), subpart (1). Furthermore, the  
16 statute requires that this information to be retained for a  
17 specified period and made available for inspection by the  
18 Department of the California Highway Patrol.

19  
20 The Commission did not locate any pre-existing requirements for the  
21 activities set forth in Education Code section 39831.5,  
22 subdivision (b) and, accordingly, found that such required  
23 activities are new.

24  
25 Vehicle Code section 22122, subdivision (c), subpart (3), states:

26  
27 "(c) When pupils need to cross a highway or private road  
28 upon which the schoolbus is stopped, at a location where  
traffic is not controlled by a traffic officer or

official traffic control signal, the driver shall do all of the following:

" . . . . .

"(3) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, across the highway or private road. The driver shall use an approved hand-held 'STOP' sign while escorting pupils."

The Commission observed that, prior to enactment of Vehicle Code section 22112, Title 13, California Code of Regulations, section 1227 stated, in relevant part:

"Section 1227. School Bus Stops.

"(b) Pupils Crossing Highway. When, to board a bus or after being discharged from a bus, pupils must cross the highway upon which the school bus is stopped, the school bus driver shall operate the flashing red signal (cross-over) lamps pursuant to Vehicle Code Section 22112, and shall also:

". . . . .

"(2) Escort across the highway all pupils who attend a prekindergarten or elementary school. The driver may use an approved handheld stop sign while escorting any pupil."

The Commission found that under Vehicle Code section 22112, subdivision (c), subpart (3), a schoolbus driver is now required to use an approved handheld "STOP" sign while escorting certain pupils across a highway or private road. Previously, the use of such signs was discretionary.

Moreover, the Commission found that this new "STOP" sign requirement does not require that these handheld signs be placed on all schoolbuses. Rather, the number of handheld "STOP" signs

1 statutorily required is the quantity needed for those schoolbuses  
2 on routes which require pupils to be escorted across highways or  
3 private roads, plus a reasonable number of additional signs for use  
4 on schoolbuses which may be used sometimes, but not always, on such  
5 routes. The number of handheld "STOP" signs subject to  
6 reimbursement shall be addressed when the parameters and guidelines  
7 are considered.

8  
9 The Commission acknowledged that the provisions of Vehicle Code  
10 section 22112, subdivision (c), subpart (3), do not expressly  
11 address the storage of "STOP" signs. However, the Commission found  
12 that storing handheld "STOP" signs on schoolbuses, when the signs  
13 are not in use, is implicit in the requirement to use such signs.

14  
15 The Commission further found that while a number of feasible  
16 methods of storing handheld "STOP" signs may exist, only those  
17 methods that are reasonable and legally necessary are subject to  
18 reimbursement. Those storage methods that are excessive and  
19 unreasonable are not reimbursable. Further, the Commission  
20 recognized that the details and costs of sign storage are issues to  
21 be addressed when parameters and guidelines are considered.

22  
23  
24 APPLICABLE LAW RELEVANT TO THE DETERMINATION  
25 OF A REIMBURSABLE STATE MANDATED PROGRAM

26  
27 Government Code section 17500 and following, and section 6,  
28 article XIIIIB of the California Constitution and related case law.

CONCLUSION

1  
2  
3 The Commission determines that it has the authority to decide this  
4 claim under the provisions of Government Code sections 17500  
5 and 17551, subdivision (a),  
6

7 The Commission concludes that the provisions of Education Code  
8 section 39831.5, subdivision (a), subpart (1), of Chapter 624,  
9 Statutes of 1992, do not impose a new program or higher level of  
10 service in an existing program within the meaning of section 6 of  
11 article XIIIIB of the California Constitution and Government Code  
12 section 17514.  
13

14 The Commission concludes that the provisions of Education Code  
15 section 39831.5, subdivision (a), subpart (2), of Chapter 624,  
16 Statutes of 1992, do impose a new program or higher level of  
17 service in an existing program within the meaning of section 6 of  
18 article XIIIIB of the California Constitution and Government Code  
19 section 17514. These provisions, although very limited in scope,  
20 require that instruction be given to pupils on school activity  
21 trips, as opposed to safety instruction required for home to school  
22 transportation.  
23

24 The Commission concludes that the provisions of Education Code  
25 section 39831.5, subdivision (b), of Chapter 624, Statutes of 1992,  
26 do impose a new program or higher level of service in an existing  
27 program within the meaning of section 6 of article XIIIIB of the  
28 California Constitution and Government Code section 17514, by

1 requiring school districts to document annual schoolbus safety  
2 instruction given to pupils and by requiring school districts to  
3 retain such documents, as specified.

4  
5 The Commission concludes that the provisions of Vehicle Code  
6 Section 22122, subdivision (c), subpart (3), do impose a new  
7 program or a higher level of service in an existing program within  
8 the meaning of section 6 of article XIIIIB of the California  
9 Constitution and Government Code section 17514, by requiring  
10 schoolbus drivers to use an approved handheld "STOP" sign while  
11 escorting pupils across a highway or private road and implicitly  
12 requiring the storage of such signs. As previously stated herein,  
13 the extent to which reimbursement for handheld "STOP" signs and  
14 storage is permissible, shall be set forth in the parameters and  
15 guidelines.

16  
17 Accordingly, such costs incurred related to the reimbursable state  
18 mandated programs stated above, are costs mandated by the state and  
19 are subject to reimbursement within the meaning of section 6,  
20 article XIIIIB of the California Constitution. Therefore, the  
21 claimant is directed to submit parameters and guidelines, pursuant  
22 to Government Code section 17557 and Title 2, California Code of  
23 Regulations, section 1183.1, to the Commission for its  
24 consideration.

25  
26 The foregoing conclusions pertaining to the reimbursable state  
27 mandated programs are subject to the following conditions:

1 The determination of a reimbursable state mandated  
2 program does not mean that all increased costs claimed  
3 will be reimbursed. Reimbursement, if any, is subject to  
4 Commission approval of parameters and guidelines for  
5 reimbursement of the' mandated program; approval of a  
6 statewide cost estimate; a specific legislative  
7 appropriation for such purpose; a timely-filed claim for  
8 reimbursement; and subsequent review of the claim by the  
9 State Controller's Office.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28