



October 10, 2017

Ms. Jill Magee  
Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



**Re: Written Comments Regarding Modifications to Text of Proposed Regulations**  
Public Hearing Date: December 1, 2017

Dear Ms. Magee:

The California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (LOCC) hereby submit these comments in response to the notice of changes made to proposed regulation Section 1183.1(c) which dictates the test claim filing period. While our organizations appreciate the attention that Commission Staff gave to our previous written comments and the responses provided, the modifications to Section 1183.1(c), as outlined in the “Staff Report on Proposed Substantial Changes,” (Staff Report) give us additional cause for concern.

Commission Staff proposes the following language as a modification to the California Code of Regulations Section 1183.1(c):<sup>1</sup>

*Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order. If costs are not incurred within 12 months following the effective date of a statute or executive order, then a test claim may be filed within 12 months (365 days) of first incurring increased costs as a result of a statute or executive order.*

As the rationale for the proposed modification, the Staff Report states, in part, “[T]he proposed regulatory action seeks to amend the regulation to make it consistent with the plain language of Government Code section 17551, and consistent with the rules of statutory construction.”<sup>2</sup>

However, the plain language of Government Code section 17551(c) clearly states:

*Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, **whichever is later.** (emphasis added.)*

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<sup>1</sup> Staff Report, Page 8, ¶1.

<sup>2</sup> Staff Report, Page 7, ¶2.

## **The Proposed Regulation, As Modified, Conflicts with Statutory Authority**

The Staff Report’s succinct history of the evolution of Government Code Section 17551, governing the period of limitation for filing test claims, makes it clear why the proposed modifications under consideration go far beyond legislative intent. Before 2002, the Government Code did not contain a period of limitation for filing test claims.<sup>3</sup> In 2002, Government Code Section 17551 was amended to add a three-year period of limitation.<sup>4</sup> Finally, in 2004, AB 2856 further shortened the period of limitation to, “not later than 12 months following the effective date of the statute or executive order, or within 12 months of first incurring increased costs as a result of the statute or executive order, **whichever is later** [emphasis added].”<sup>5</sup>

One finds the intent of the Legislature and the public in the words of statutes and initiatives, not elsewhere.<sup>6</sup> Despite no information regarding legislative intent in the committee analysis and legislative counsel’s digest, the Staff Report points to a contemporaneous report by the Legislative Analyst’s Office that, “indicated a desire to move the Commission’s test claim processes along faster, in part by requiring claimants to file promptly.”<sup>7</sup> Notwithstanding the purported effort to require prompt filing by claimants however, the very next year, 2005, the Commission amended 1183.1(c) to add the section recommended to be stricken now: defining the date costs are first incurred to mean by June 30 of the fiscal year following the fiscal year in which costs are first incurred. No analysis or comments were filed on that rulemaking, but they were presumably adopted as technical conforming changes to assist the Commission Staff with processing complete and accurate test claims from local governments.

Although associations representing local government urged the Commission to reject the prior version of the proposed regulatory changes in previous written comments, at the July 28, 2017 hearing, they nonetheless conceded that the proposed changes would align the language of Section 1183.1(c) with that of Government Code section 17551(c). The recent modifications, however, propose a regulation that subtracts entitlements enacted in statute and may cause the Commission to act in excess of its statutory authority. An administrative agency may not, under the guise of rulemaking, abridge or enlarge its authority or exceed the powers given to it by the statute – the source of its power.<sup>8</sup> A regulation is void if it was promulgated in excess of statutory authority.<sup>9</sup> Courts must strike down a regulation that attempts to add or subtract from the statute.<sup>10</sup> Administrative regulations in conflict with the Constitution or statutes are generally declared to be null and void.<sup>11</sup>

The regulation modification under consideration here, striking “whichever is later” from Section 1183.1(c), would subtract from the plain statutory language for the period of limitation authority prescribed in Government Code section 17551(c). If enacted, this modification would undoubtedly invite a writ action by a test claimant to declare the changes to Section 1183.1(c) void and compel the Commission’s compliance with the plain statutory language of 17551(c). Simply put, lawfully

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<sup>3</sup> Staff Report on Proposed Substantial Changes, posted September 8, 2017 [Staff Report], Page 4, ¶12.

<sup>4</sup> Staff Report, Page 4, ¶13.

<sup>5</sup> Statutes, 2004, Chapter 890.

<sup>6</sup> *Prof'l Eng'rs in Cal. Gov't v. State Pers. Bd.* (2001) 90 Cal.App.4th 678, 688.

<sup>7</sup> Staff Report, Page 5, ¶13.

<sup>8</sup> *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1480.

<sup>9</sup> *Ibid.* at 1479.

<sup>10</sup> *Ibid.* at 1480.

<sup>11</sup> *Pardee Construction Co. v. California Coastal Comm'n*, (1979) 95 Cal.App.3d 471, 479.

striking “whichever is later” from Section 1183.1(c) requires an act of the Legislature to change section 17551.

As discussed further below, the interpretation of Section 1183.1(c) proposed in the Staff Report would potentially lead to likely unintended if not absurd consequences for the test claims filed before the Commission.

### **Impact of the Proposed Regulation, As Modified**

The Staff Report assures local governments that under the current requirements of Government Code Section 17551(c) and the proposed regulatory language to Section 1183.1(c) agencies “can still go through a budget cycle before a test claim would have to be filed 12 months after either the effective date of the statute or executive order, or the date of first incurring costs.”<sup>12</sup> This is simply untrue under the modified text. By striking out the “whichever is later” test and inserting an exclusionary clause, not only does the modified text diverge from Government Code Section 17551(c), it also creates a situation where local governments may have as little as a month or even a few days between first incurred costs and the deadline to submit a test claim.

For instance, Governor Brown recently signed Assembly Bill 918, also known as the “California Voting for All Act,” into law. As a result, county elections officials will be required, starting January 1, 2018, to expand the availability and accessibility of facsimile ballots in languages other than English. Counties, however, will likely not incur costs until halfway into the year, commensurate with the June statewide primary date. Under Government Code Section 17551(c), counties have one year after the date of first incurred costs regardless of the statute’s effective date. The modified version of the proposed regulations, however, disregards the date of first incurred costs if it falls within one year of the statute becoming effective. Therefore, counties would have significantly less time to gather the relevant date and file a test claim. This becomes even more problematic if a local government does not begin incurring costs until month 11 of a statute taking effect, thereby potentially leaving a claimant with less than a month to file a test claim.

“It is a well settled principle of statutory interpretation that [the] language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ [Citations.] ... Thus, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.’ [Citation.]”<sup>13</sup> A strict interpretation of the modified proposed changes could potentially lead to a scenario where, for a statute enacted January 1, 2018, a test claimant that first incurs increased costs on December 1, 2018 has until December 31, 2018 to file a test claim. But a test claimant that first incurs increased costs on January 2, 2018, only one month later, has until January 3, 2019 to file their test claim. Such a result would not conform with the spirit or intent of the Legislature, particularly in contrast with Government Code section 17551(c), which includes the provision “whichever is later.”

As Commissioner Olsen noted during the September 22, 2017 hearing, the proposed modifications would only serve to make it “more difficult to bring legitimate claims.” If the Commission had a history of “spurious” claims, the changes could be construed as reasonably necessary; but that is not the situation facing the Commission.

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<sup>12</sup> Staff Report, Page 7, ¶3.

<sup>13</sup> *McLaughlin v. State Bd. of Education* (1999) 186 Cal.App.4th 1298, 1315.

As an alternative, we ask the Commission to consider restoring the earlier version of changes to Section 1183.1(c) as originally proposed. Doing so would realign the regulations with Government Code Section 17551(c) and lessen the burden on local governments that incur costs within the first year of a statute's effective date.

Please do not hesitate to contact Dillon Gibbons (CSDA) at 916-442-7887, Dorothy Johnson (CSAC) at 916-327-7500, or Dan Carrigg (LOCC) at 916-658-8222 should you have any questions.

Sincerely,



Dillon Gibbons  
Legislative Representative  
California Special Districts Association



Dorothy Johnson  
Legislative Representative  
California State Association of Counties



Dan Carrigg  
Deputy Executive Director, Legislative Director  
League of California Cities