

ITEM 3

TEST CLAIM

PROPOSED DECISION

Education Code Section 44977.5

Statutes 2015, Chapter 400 (AB 375)

Certificated School Employees: Parental Leave

16-TC-01

Fresno Unified School District, Claimant

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Draft Proposed Decision issued July 14, 20171-39

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Claimant’s Comments on the Draft Proposed Decision, filed August 4, 20171-13

Exhibit F

Supporting Documentation1-73

Assembly Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015.

Assembly Committee on Education, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015.

California Department of Education, California School Accounting Manual (2016) pages 210-15 – 210-19. <http://www.cde.ca.gov/fg/ac/sa/documents/csam2016complete.pdf> (accessed on May 23, 2017).

California Teachers Association Website: <http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx> (accessed on May 23, 2017).

Commission on State Mandates, Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003.

CSAC-Excess Insurance Authority v. Commission on State Mandates, December 20, 2006, B188169; review denied by Supreme Court March 21, 2007, unpublished opinion.

Senate Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015.

Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015.

1. TEST CLAIM TITLE

School Officers and Employees - Sick Leave

2. CLAIMANT INFORMATION

Fresno Unified School District

Name of Local Agency or School District

Ruth F. Quinto

Claimant Contact

Deputy Superintendent / CFO

Title

2309 Tulare Street

Street Address

Fresno, CA 93721

City, State, Zip

559-457-6225

Telephone Number

559-457-6202

Fax Number

Ruthie.Quinto@fresnounified.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Arthur M. Palkowitz

Claimant Representative Name

Attorney

Title

Artiano Shinoff

Organization

2488 Historic Decatur Road, Suite 200

Street Address

San Diego, CA 92106

City, State, Zip

619-232-3122

Telephone Number

619-232-3264

Fax Number

apalkowitz@as7law.com

E-Mail Address

| | |
|-------------------------|---|
| <i>For CSM Use Only</i> | |
| Filing Date: | RECEIVED December 21, 2016 <i>Commission on State Mandates</i> |
| Test Claim #: | 16-TC-01 |

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

Education Code section 44977.5
Statutes 2015 Charter 400
A.B. No. 375

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative: pages 4 to 10 .
- 6. Declarations: pages 11 to 12 .
- 7. Documentation: pages 13 to 18 .

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

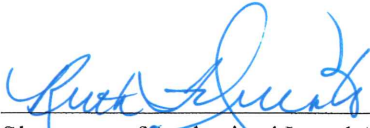
8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Ruth F. Quinto

Print or Type Name of Authorized Local Agency or School District Official



Signature of Authorized Local Agency or School District Official

Deputy Superintendent / CFO

Print or Type Title

January 11, 2017

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim of:
Fresno Unified School District
Claimants.

No. CSM _____
Statutes 2015 Chapter 400, A.B. No.; 375
School Officers and Employees - Sick Leave

STATEMENT OF THE CLAIM

This test claim alleges reimbursable costs mandated by the State for school districts to provide differential pay benefits of up to 12 weeks, if the employee is absent on account of maternity or paternity leave, (“School Officers and Employees- Sick Leave”) pursuant to the requirements in Statutes 2015 Chapter 400, A.B. No 375.

Claimants allege that the test claim statutes impose a reimbursable state mandated program for school districts under Article XIII B, section 6 and Government Code section 17514. It was the intent of the Legislature in enacting the test claim statutes and regulations to require school employees on maternity or paternity leave to receive differential pay.

AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551, subdivision (a) to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the State for costs mandated by the State as required by section 6 of Article XIII B of the California Constitution.

(*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.) The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. (*County of San Diego v. State of California*, (1997) 15 Cal.4th 68,109.)

Fresno Unified School District, (“Claimant”) is a school district as defined in Government Code Section 17519. This test claim is filed pursuant to title 2, California Code of Regulations section 1183.1.

A. California Constitution requires the State to reimburse schools

Article XIII B, section 6 of the California Constitution states:

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 such local government for the costs of such programs or increased level of service.

The purpose of Article XIII B, section 6 is to:

[p]reclude 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 article XIII A and XIII B impose.

(*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]...” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.) Reimbursement under Article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. (*San Diego Unified School Dist. v. Commission on State Mandates*, (2004) 33 Cal.4th 859, 874.)
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public;
 - or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state. (*San Diego Unified School Dist., supra*

33 Cal.4th at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).)

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order, and it increases the level of service provided to the public. (*San Diego Unified School Dist.*, supra 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal 3d 830, 835.)

B. The new program is mandated when the schools incur increased costs

Government Code section 17514 provides that:

[c]osts mandated by the state means any 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.

Government Code section 17564 provides that:

[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars.

Claimant alleges increased costs mandated by the state in the amount of \$10,000,000.00, for schools in the districts impacted by the test claim statutes, which exceeds the \$1,000.00 minimum claim amount articulated in Government Code section 17564(a). Government Code section 17556(e) states that there are no costs mandated by the state, if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill.

There is no evidence that additional on-going revenue has been appropriated, specifically to fund the costs of the mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim. Accordingly, the evidence in the record supports the finding that the claimant has incurred increased costs mandated by the state, pursuant to Government Code section 17514. However, to the extent a district receives any funding or grant funding and applies

those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the district.

Identify the specific sections of statutes or executive orders alleged to contain a mandate. Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000.00), and include all of the following elements for each statute or executive order alleged:

A. Statutes 2015 Chapter 400, A.B. No 375; Section 1

Pursuant to this new legislation, when a person employed in a position requiring certification qualifications is absent on account of maternity or paternity leave for a 12 week period, they are entitled to receive the difference between his or her salary and the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee is employed, the amount that would have been paid to the substitute had he or she been employed.

The new legislation would prohibit a certificated school employee on maternity or paternity leave pursuant to the Moore–Brown–Roberti Family Rights Act from being denied access to differential pay while on that leave. The legislation provides that, to the extent these provisions conflict with any provision of a collective bargaining agreement entered into before January 1, 2016, by a public school employer and an exclusive bargaining representative, these provisions shall not apply until the expiration or renewal of that collective bargaining agreement.

AB 375 added (SEC. 1.) Section 44977.5 of the Education Code is added to read:

SECTION 1, section 44977.5 is added to the Education Code, to read:

44977.5. (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave pursuant to Section 12945.2 of the Government Code for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would

have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(b) For purposes of subdivision (a):

(1) The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave pursuant Section 12945.2 of the Government Code.

(2) An employee shall not be provided more than one 12-week period per maternity or paternity leave. However, if a school year terminates before the 12-week period is exhausted, the employee may take the balance of the 12-week period in the subsequent school year.

(3) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.

(c) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing school district.

(d) To the extent that this section conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, this section shall not apply until expiration or renewal of that collective bargaining agreement.

(e) For purposes of this section, “maternity or paternity leave” means leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

Other Activities

Developing and implementation of internal policies, training, procedures and forms relating to the administration of the maternity or paternity Leave Program. (One-time)

B. A detailed description of existing activities and costs that are modified by the mandate

Prior activities and costs that are modified by the mandate include:

Under prior law, when a certificated school employee exhausts all available sick leave, and continues to be absent from his or her duties on account of paternity or maternity leave for an additional 12 weeks, the employee was not entitled to differential pay.

C. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate

\$17,972.86.

D. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed

Unknown at this time.

E. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

\$10,000,000.00.

F. Identification of all of the following funding sources available for this program:

(i) Dedicated state funds¹

Claimant is unaware at this time of any other dedicated state funds available for this program.

¹ 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. (Cal. Const. art. 13B, § 6)

(ii) **Dedicated federal funds**

Claimant is unaware at this time of any other dedicated state funds available for this program.

(iii) **Other nonlocal agency funds**

Claimant is unaware at this time of any other dedicated state funds available for this program.

(iv) **The local agency's general purpose funds**

Claimant is unaware at this time of any other dedicated state funds available for this program.

(v) **Fee authority to offset costs**

Claimant is unaware at this time of any other dedicated state funds available for this program.

G. Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate

Claimant is unaware at this time of any prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

H. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order

Claimant is unaware at this time of any other dedicated state funds available for this program.

Test Claim:
School Officers and Employees- Sick Leave
Claimants: Fresno Unified School District
Section: 6 – Declaration

SECTION NUMBER: 6
Heading: DECLARATION

I, Jacquie Canfield, Executive Officer, Fiscal Services for the Fresno Unified School District, declare as follows:

Section A. The actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

It is estimated the increased costs that will be incurred by the claimant to implement the alleged mandate is approximately:

| | |
|------------------------|-------------|
| Actual Costs (2016) | \$17,972.86 |
| Estimated Costs (2017) | Unknown |

Section B. Identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs:

None known at this time.

Section C. Describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections or page numbers alleged to impose a reimbursable state mandated program):

1. Statutes 2015 Chapter 400, A.B. No 375;
2. Education Code § 44977.5.

New Activities

This new legislation requires that when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the

Test Claim:
School Officers and Employees- Sick Leave
Claimants: Fresno Unified School District
Section: 6 – Declaration

employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid to a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.


Developing and implementation of internal policies, training, procedures and forms relating to the administration of the Sick Leave Program. (One-time)

Section F.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Dated: December 15, 2016



JACQUIE CANFIELD,
EXECUTIVE OFFICER, FISCAL SERVICES
FRESNO UNIFIED SCHOOL DISTRICT

Phone Number: (559) 457-3907
Office Fax: (559) 457-3559
Jacquie.Canfield@fresnounified.org

CHAPTER 400
FILED WITH SECRETARY OF STATE OCTOBER 1, 2015
APPROVED BY GOVERNOR OCTOBER 1, 2015
PASSED THE SENATE SEPTEMBER 3, 2015
PASSED THE ASSEMBLY SEPTEMBER 8, 2015
AMENDED IN SENATE JULY 8, 2015
AMENDED IN ASSEMBLY MAY 4, 2015

INTRODUCED BY Assembly Member Campos

FEBRUARY 18, 2015

An act to add Section 44977.5 to the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 375, Campos. School employees: sick leave: paternity and maternity leave.

Under existing law, when a certificated school employee exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, the employee during that additional period receives the difference between his or her salary and the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.

This bill would additionally provide the differential pay benefit described above for up to 12 weeks if the certificated school employee is absent on account of maternity or paternity leave, as defined, as specified. The bill would provide that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, during a period of maternity or paternity leave. The bill would prohibit a certificated school employee on maternity or paternity leave pursuant to the Moore-Brown-Roberti Family Rights Act from being denied access to differential pay while on that leave. The bill would provide that, to the extent these provisions conflict with any provision of a collective bargaining agreement entered into before January 1, 2016, by a public school employer and an exclusive bargaining representative, these provisions shall not apply until the expiration or renewal of that collective bargaining agreement.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 44977.5 is added to the Education Code, to read:

44977.5. (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave pursuant to Section 12945.2 of the Government Code for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(b) For purposes of subdivision (a):

West's Annotated California **Codes**

Education Code (Refs & Annos)

Title 2. Elementary and Secondary **Education** (Refs & Annos)

Division 3. Local Administration (Refs & Annos)

Part 25. Employees (Refs & Annos)

Chapter 4. Employment--Certificated Employees (Refs & Annos)

Article 3. Resignations, Dismissals, and Leaves of Absence (Refs & Annos)

West's Ann.Cal.Educ.Code § **44977.5**

§ **44977.5**. Absence from duties on account of maternity or paternity leave; exhaustion of available sick leave; deduction from salary

Effective: January 1, 2016 to December 31, 2016
Currentness

(a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave pursuant to Section 12945.2 of the Government Code for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(b) For purposes of subdivision (a):

(1) The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave pursuant Section 12945.2 of the Government Code.

(2) An employee shall not be provided more than one 12-week period per maternity or paternity leave. However, if a school year terminates before the 12-week period is exhausted, the employee may take the balance of the 12-week period in the subsequent school year.

(3) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.

(c) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing school district.

(d) To the extent that this section conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, this section shall not apply until expiration or renewal of that collective bargaining agreement.

(e) For purposes of this section, “maternity or paternity leave” means leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

Credits

(Added by Stats.2015, c. 400 (A.B.375), § 1, eff. Jan. 1, 2016.)

West's Ann. Cal. Educ. Code § 44977.5, CA EDUC § 44977.5

Current with all 2016 Reg.Sess. laws, Ch. 8 of 2015-2016 2nd Ex.Sess., and all propositions on 2016 ballot.

End of Document

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WESTLAW

2015 Cal. Legis. Serv. Ch. 400 (A.B. 375) (WEST)

CALIFORNIA 2015 LEGISLATIVE SERVICE
 SCHOOL OFFICERS AND EMPLOYEES—COMPENSATION AND SALARIES—SICK LEAVE
 2015 Cal. Legis. Serv. Ch. 400 (A.B. 375) (WEST) (Approx. 2 pages)

2015 Portion of 2015-2016 Regular Session

Additions are indicated by **Text**; deletions by

~~***~~.

Vetoed are indicated by Text ;

stricken material by **Text-** .

CHAPTER 400

A.B. No. 375

SCHOOL OFFICERS AND EMPLOYEES—COMPENSATION
 AND SALARIES—SICK LEAVE

AN ACT to add Section 44977.5 to the Education Code, relating to
 school employees.

[Filed with Secretary of State October 1, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 375, Campos. School employees: sick leave: paternity and
 maternity leave.

Under existing law, when a certificated school employee exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, the employee during that additional period receives the difference between his or her salary and the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.

This bill would additionally provide the differential pay benefit described above for up to 12 weeks if the certificated school employee is absent on account of maternity or paternity leave, as defined, as specified. The bill would provide that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, during a period of maternity or paternity leave. The bill would prohibit a certificated school employee on maternity or paternity leave pursuant to the Moore–Brown–Roberti Family Rights Act from being denied access to differential pay while on that leave. The bill would provide that, to the extent these provisions conflict with any provision of a collective

TC016

bargaining agreement entered into before January 1, 2016, by a public school employer and an exclusive bargaining representative, these provisions shall not apply until the expiration or renewal of that collective bargaining agreement.

The people of the State of California do enact as follows:

SECTION 1. Section 44977.5 is added to the Education Code, to read:

<< CA EDUC § 44977.5 >>

44977.5. (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave pursuant to Section 12945.2 of the Government Code for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(b) For purposes of subdivision (a):

(1) The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave pursuant Section 12945.2 of the Government Code.

(2) An employee shall not be provided more than one 12-week period per maternity or paternity leave. However, if a school year terminates before the 12-week period is exhausted, the employee may take the balance of the 12-week period in the subsequent school year.

(3) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.

(c) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing school district.

(d) To the extent that this section conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, this section shall not apply until expiration or renewal of that collective bargaining agreement.

(e) For purposes of this section, “maternity or paternity leave” means leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

**End of
Document**

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BEFORE THE BOARD OF EDUCATION
OF THE FRESNO UNIFIED SCHOOL DISTRICT
OF FRESNO COUNTY, CALIFORNIA

RESOLUTION NO. 15-11

On motion of Trustee Davis, seconded by Trustee De La Cerda, RESOLUTION NO 15-11 was adopted as follows:

BE IT RESOLVED by the Governing Board of the Fresno Unified School District and hereby ordered that
Lindsay Cal Johnson, President, Board of Education
Christopher De La Cerda, Clerk, Board of Education
Brooke Ashjian, Board of Education
Luis A. Chavez, Board of Education
Valerie F Davis, Board of Education
Carol Mills, J D , Board of Education
Janet Ryan, Board of Education
Michael E Hanson, Superintendent or
Ruth F Quinto, Deputy Superintendent/CFO, Administrative Services

be authorized as fiscal agents to sign orders, warrants, contracts, budgets, budget transfers, or other papers for and on behalf of the school district, when the same are required or authorized to be signed in the regular course of the school business of the Fresno Unified School District, and when regularly authorized and ordered by the Governing Board of said school district, effective August 26, 2015

BE IT FURTHER RESOLVED and hereby ordered that:

Michael E Hanson, Superintendent
Ruth F Quinto, Deputy Superintendent/CFO, Administrative Services

be authorized as fiscal agents to approve electronic business transactions, including budget transfers, in the regular course of the school business of the Fresno Unified School District, and when regularly authorized and ordered by the Governing Board of said school district, effective August 26, 2015

BE IT FUTURE RESOLVED and hereby ordered that.

Michael E Hanson, Superintendent
Ruth F Quinto, Deputy Superintendent/CFO, Administrative Services
Paul Idsvoog, Chief, Human Resources/Labor Relations

be authorized as fiscal agents to sign payroll and personnel records, orders and reports

This RESOLUTION revokes and supersedes Resolution No. 13-15 and is effective on August 26, 2015, until revoked or superseded

PASSED AND ADOPTED this 26th day of August 2015, by the Governing Board of the Fresno Unified school District of Fresno County, California, by the following vote

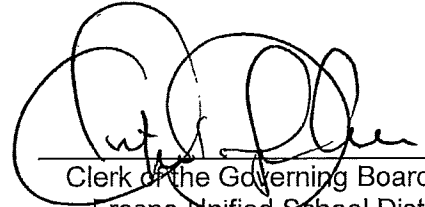
AYES 5
NOES 0
ABSENT 2 (*Member Ryan absent and
Member Chavez stepping away*)



STATE OF CALIFORNIA)
COUNTY OF FRESNO)

I, Christopher De La Cerda, authorized agent of the Governing Board of Fresno Unified School District of Fresno County, California, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the said Board at a regular meeting thereof held at its regular place of meeting at the time and by the vote above stated.

Witness my hand this 26th day of August 2015



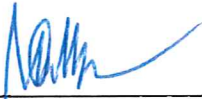
Clerk of the Governing Board of
Fresno Unified School District

FRESNO UNIFIED SCHOOL DISTRICT
CERTIFICATION OF SIGNATURES

I, Michael E. Hanson, Secretary of the Board of Education of the Fresno Unified School District of Fresno County, California, certify that the signatures shown below are the verified signatures of the members of the Governing Board of the above-named school district.

These approved signatures will be considered valid for the period of August 26, 2015, until revoked or superseded.

Date of Board Action August 26, 2015

Signature 
Michael E. Hanson
Secretary to the Board

Signatures of Member of Board:

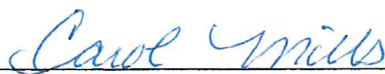
Signature 
Lindsay Cal Johnson
President of the Board of Education

Signature 
Christopher De La Cerda
Clerk of the Board of Education

Signature 
Brooke Ashjian
Member of the Board of Education

Signature _____
Luis A. Chavez
Member of the Board of Education

Signature 
Valerie F. Davis
Member of the Board of Education

Signature 
Carol Mills, J.D.
Member of the Board of Education

Signature _____
Janet Ryan
Member of the Board of Education

The signatures of the majority of the members of the governing board constitute authority to sign orders of the school district in the event duly authorized staff agents are unable to do so

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 17, 2017, I served the:

Test Claim Filing; Notice of Complete Test Claim Filing, Tentative Hearing Date, and Schedule for Comments

School Employees: Sick Leave, 16-TC-01

Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)

Fresno Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 17, 2017 at Sacramento, California.



Jill L. Magee

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/17/17

Claim Number: 16-TC-01

Matter: School Employees: Sick Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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February 14, 2017

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED
February 14, 2017
Commission on
State Mandates

Dear Ms. Halsey:

As requested in your letter of January 17, 2017, the Department of Finance (Finance) has reviewed the test claim submitted by Fresno Unified School District (claimant) asking the Commission to determine whether the specified costs incurred for the *School Employees: Sick Leave, Test Claim (16-TC-01)*, are reimbursable state mandated costs.

This test claim references Education Code section 44977.5, added by the enactment of AB 375 (Chapter 400, Statutes of 2015), requiring school districts to provide differential pay benefits for up to 12 weeks if a certificated employee is absent for maternity or paternity leave. In Section 5, beginning on page 5 of the test claim, the claimant has identified new duties, which it asserts are reimbursable state mandates. Specifically, the claimant identifies one-time activities for the development and implementation of internal policies, training, procedures, and forms relating to the administration of differential pay for maternity or paternity leave for certificated employees. In addition, the claimant identifies the cost of the differential pay due a certificated employee on maternity or paternity leave.

As a result of our review, we respectfully submit the following comments and conclusions.

To the extent that AB 375 may result in the need for school districts to develop and implement internal policies, training, procedures, and forms to administer differential pay for certificated employees on maternity or paternity leave, Finance concurs that recognizing these activities as one-time state-reimbursable costs would be consistent with the Commission's 2003 decision regarding the *Differential Pay and Reemployment Program, (99-TC-02)*. Additionally, consistent with this decision, the activities required by AB 375 may require school districts to process paperwork to administer differential pay for certificated employees on maternity or paternity leave, which would likely be determined to be an ongoing, state-reimbursable cost.

Given that the claimant did not differentiate the costs for one-time activities from the cost for ongoing activities in the test claim, the one-time costs are indeterminable from the test claim. However, total annual state-wide cost claims for the reimbursable costs of the existing *Differential Pay and Reemployment Program* for each of the fiscal years from 1998-99 through 2010-2011 ranged between \$3,000 and \$33,000, with more recent years' state-wide cost claims in the few thousands of dollars annually. This overall reduction in cost claims is likely reflective of a shift from more-significant one-time start-up costs, to relatively absorbable ongoing costs in the administration of the *Differential Pay and Reemployment Program*. Therefore, Finance anticipates that the ongoing costs associated with the administration of providing differential pay to certificated employees on maternity or paternity leave (when considering a greater number of certificated employees are likely to be eligible for this benefit than are eligible for the *Differential*

Pay and Reemployment Program) would likely be less than the low tens of thousands of dollars annually.

Finance finds that the cost of the differential pay compensation for certificated employees on maternity or paternity leave is not a state-reimbursable cost. In the Statement of Decision for the *Differential Pay and Reemployment Program*, the Commission concluded based on several instances of case law that, "the cost of a particular benefit to public employees is increased in certain circumstances, but there is no concomitant increase in the level of service to the public...[t]herefore, the Commission finds no new program or higher level of service within the meaning of article XIII B, section 6, for any increased costs for the amount of differential pay compensation...". The Commission further cited the California Supreme Court in *City of Anaheim v. State of California (1987) 189 Cal.App.3d. 1478*, wherein the Court concluded that while the local agency was faced with a higher cost of compensation to its employees, "This is not the same as a higher cost of providing services to the public." Therefore, the cost of the additional employee compensation is not state-reimbursable.

If you have any questions regarding this letter, please contact Jessica Holmes, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,


JEFF BELL
Program Budget Manager 

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 14, 2017, I served the:

Finance Comments

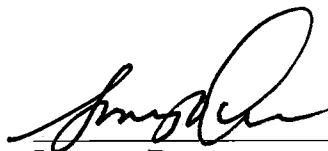
School Employees: Sick Leave, 16-TC-01

Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)

Fresno Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 14, 2017 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/17

Claim Number: 16-TC-01

Matter: School Employees: Sick Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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RECEIVED
March 15, 2017
*Commission on
State Mandates*

March 14, 2017

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Case Name: School Employees: Sick Leave (16-TC-01)
Response to Department of Finance Comments
Claimant: Fresno Unified School District

Dear Ms. Halsey:

Fresno Unified School District (“Claimant”) files the following written rebuttal in response to Department of Finance’s (“DOF”) comments.

A. Introduction

The claimant timely filed the test claim on December 21, 2016. The test claim alleges reimbursable costs mandated by the state for school districts to provide differential pay benefits of up to 12 weeks, if the employee is absent on account of maternity or paternity leave, pursuant to the requirements in Statutes 2015 Chapter 400, A.B. No 375. On January 17, 2017, the Commission found the filing to be complete.

DOF comments dated February 14, 2017, concur that the activities to develop and implement internal policies, training, procedures and forms to administer differential pay for certificated employees on maternity or paternity leave are state reimbursable costs.

B. Summary

The tests claim statute provides that when a school district employee in a position requiring certification qualifications is absent on account of maternity or paternity leave for a period of 12 weeks, the employee is entitled to receive the difference between his or her salary, and the sum that is paid a substitute employee employed to fill his or her position, during his or her absence. If no substitute employee is employed, the amount that would have been paid to the substitute, had he or she been employed, is paid to the person who is absent because of maternity or paternity leave.

Case Name: School Employees: Sick Leave

The new legislation prohibits a certificated school employee on maternity or paternity leave, pursuant to the Moore–Brown–Roberti Family Rights Act, from being denied access to differential pay, while on that leave.

Test claim requirements provide an enhanced service to the public:

1. Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond.
2. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship affects a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent, known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy.
3. Overall, paid family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they are more likely to choose to remain in the labor market; and paid parental leave is associated with higher employment in economies around the world. (AB 375; Assembly Third Reading-May 4, 2015)
4. Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression.
5. The author's office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave. (Senate Rules Committee July 8, 2015)

Legal Analysis

C. Test claim requirements are unique to public service.

Procedures governing the constitutional requirement of reimbursement under Article XIII B, section 6, are set forth in Government Code section 17500, et seq. The Commission on State Mandates (“Commission”) (Gov. Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. (Gov. Code, § 17551.)

Case Name: School Employees: Sick Leave

Government Code section 17561, subdivision (a), provides that “The state shall reimburse each ... school district for all ‘costs mandated by the state,’ as defined in section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” to mean, in relevant part, “any increased costs which a ... school district is required to incur ... as a result of any statute ... 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.” (*San Diego Unified Sch. Dist. v. Comm'n On State Mandates*, 33 Cal. 4th 859, 872 (2004).)

DOF¹ relies on *City of Anaheim v. State of California*, where the court affirmed a denial of a test claim based on costs incurred, as a result of reserve transfers in the Public Employees' Retirement System (PERS). The transfers reduced credits, which the city received for interest earned on deposits, resulting in a higher employer contribution rate. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478 (1987). The Second District Court of Appeal, held that: (1) statute requiring PERS to increase pension payments to retired employees and funding the additional payments from excess amounts held in reserve deficiencies account did not compel city to do anything and any increase in costs, due to city's loss of interest on the excess funds, was only incidental to the statute, so that city was not entitled to reimbursement, and (2) pension payments to retired employees do not constitute a “program” or “service” for purposes of state constitutional provision requiring reimbursement to cities for costs of programs and services mandated by legislature. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478, 1482 (1987).

The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state, since administrative activities and the payment for differential pay for public school teachers, due to maternity or paternity leaves, would constitute a “program.”

“...when the voters adopted Article XIII B, § 6, their intent was to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.” (*City of Los Angeles v. State of California*, 43 Cal. 3d 46 (1987).)

The drafters and the electorate had in mind the commonly understood meanings of the term - programs that carry out the governmental function of providing services to the public, or

¹ Finance’s comments failed to comply with Cal. Code Regs., tit. 2 §§ 1183.2 and 1187.5 and shall be excluded from the Commission’s ultimate findings and the record.

Case Name: School Employees: Sick Leave

laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state (*Id.*)

DOF reliance on *County of Los Angeles* is misguided as the test claim was based on amended Labor Code provisions related to workers' compensation, a law that impacts public and private employers alike. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.) The court concluded "when the voters adopted Article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies." (*Id.*)

D. Previous Test Claim failed to require an increased level of service.

The *Differential Pay and Reemployment Test Claim* approved by the Commission on July 31, 2003, involved the amendment to the differential pay statute specifying that the five-month period runs *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave. The Commission determined there was no new program or higher level of service, within the meaning of Article XIII B, section 6, for any increased costs for the amount of differential pay compensation, when it is calculated consecutively, rather than concurrently, with accumulated sick leave, and that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child's future mental, physical, social, and emotional health in life impacted by the strength of the relationship with both of the child's parents. The test claim does not involve concurrent and consecutive sick leave that is limited to a change in calculating differential pay.

Conclusion

This test claim requires increased costs on school districts, and the payments constitute a "program" or "service" for purposes of state constitutional provision, requiring reimbursement to school districts for costs of providing maternity and paternity leave to public employees.

Artiano Shinoff

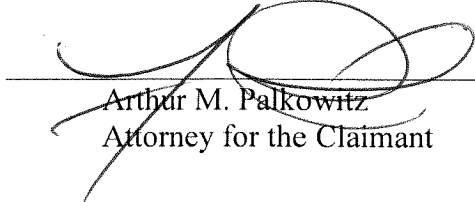
Heather Halsey
Executive Director
Commission on State Mandates

Page 5

Case Name: School Employees: Sick Leave

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.



Arthur M. Palkowitz
Attorney for the Claimant

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 15, 2017, I served the:

Claimant Rebuttal Comments

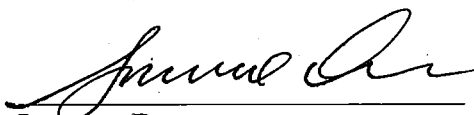
School Employees: Sick Leave, 16-TC-01

Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)

Fresno Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 15, 2017 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/17

Claim Number: 16-TC-01

Matter: School Employees: Sick Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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July 14, 2017

Mr. Arthur Palkowitz
Artiano Shinoff
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San Diego, CA 92106

Mr. Justyn Howard
Department of Finance
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Certificated School Employees: Parental Leave, 16-TC-01
Education Code Section 44977.5;
Statutes 2015, Chapter 400 (AB 375)
Fresno Unified School District, Claimant

Dear Mr. Palkowitz and Mr. Howard:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **August 4, 2017**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Palkowitz and Mr. Howard

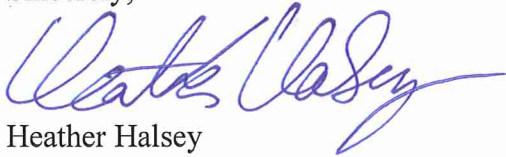
July 14, 2017

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Hearing

This matter is set for hearing on **Friday, September 22, 2017** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 8, 2017. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM ___
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Section 44977.5

Statutes 2015, Chapter 400 (AB 375)

Certificated School Employees: Parental Leave

16-TC-01

Fresno Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

The test claim statute, Statutes 2015, chapter 400, added section 44977.5 to the Education Code, effective January 1, 2016, to require school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave), which may be taken for up to 12 school weeks, due to the birth of the employee's child or the placement of a child with the employee as a result of adoption or foster care. Differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute employee, or if no substitute was employed, the amount that would have been subtracted if one had been employed. The Test Claim alleges reimbursable costs for the amount of differential pay provided to certificated school district employees, and one-time costs for developing and implementing internal policies, training, procedures, and forms relating to the administration of the program.

Staff recommends that the Commission on State Mandates (Commission) deny this Test Claim. Although the test claim statute applies uniquely to local school districts and provides a new benefit to certificated employees, the differential pay does not increase the level of service provided to the public and thus, does not constitute a new program or higher level of service, and does not impose increased costs mandated by the state. Moreover, the test claim statute does not mandate a new program or higher level of service to develop and implement internal policies and procedures, training, and forms, or the activities to calculate and pay the differential pay. Therefore, the test claim statute does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Procedural History

The test claim statute (Stats. 2015, ch. 400) was chaptered on October 1, 2015, and became effective January 1, 2016. Fresno Unified School District (claimant) filed the Test Claim on

December 21, 2016.¹ The Department of Finance (Finance) filed comments on the Test Claim on February 14, 2017.² The claimant filed rebuttal comments on March 15, 2017.³ Commission staff issued the Draft Proposed Decision on July 14, 2017.⁴

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the 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 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. In making its decisions, the Commission must strictly construe XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation:

| Subject | Description | Staff Recommendation |
|--|---|---|
| Does the test claim statute impose a reimbursable state-mandated program for the differential pay provided to the certificated employee on parental leave? | The test claim statute requires school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave), | <i>Deny</i> – Although the test claim statute applies uniquely to school districts and provides a new benefit to certificated employees, the requirement to provide differential pay does not constitute a new program or higher level of service and does not result in increased costs mandated by the state. Courts have consistently held that increases in the cost of |

¹ Exhibit A, Test Claim.

² Exhibit B, Department of Finance Comments on the Test Claim.

³ Exhibit C, Claimant’s Rebuttal Comments.

⁴ Exhibit D, Draft Proposed Decision.

⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

| | | |
|--|--|--|
| | <p>which may be taken for up to 12 school weeks due to the birth of the employee's child or the placement of a child with the employee as a result of adoption or foster care. Differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute employee, or if no substitute was employed, the amount that would have been subtracted if one had been employed.</p> | <p>providing employee compensation or benefits are not subject to reimbursement as state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6.⁶ Rather, a new program or higher level of service exists only when the test claim statute requires an increase in the actual level of governmental service provided to the public.⁷ The governmental service provided by school districts is public education. The test claim statute requires differential pay - an employee benefit, but does not increase the level of education services to the public. Moreover, the test claim statute does not result in increased costs mandated by the state. The amount spent by the school district on the differential pay and the pay to the substitute teacher equals the amount the school district budgeted and would have paid the certificated employee if the certificated employee had not taken parental leave. Although the test claim statute may result in a loss of costs savings, article XIII B, section 6 does not require reimbursement for a loss of cost savings.</p> |
|--|--|--|

⁶ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46. *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478. *City of Sacramento v. State of California* (1990) 50 Cal.3d 51. *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

⁷ *San Diego Unified School Dist. V. Commission on State Mandates* (2004) 33 Cal.4th. 859, 878.

| | | |
|---|---|--|
| <p>Does the test claim statute impose a reimbursable state-mandated program for administrative activities to implement the requirement to pay the differential pay?</p> | <p>The claimant alleges reimbursable costs for the one-time activities of developing and implementing internal policies, training, procedures, and forms relating to the administration of the program.</p> | <p><i>Deny</i> – The administrative activities to develop and implement internal policies, procedures, and training, and to adopt forms, are not mandated by the plain language of the test claim statute. Although a school district may find that administrative activities are necessary to comply with the requirement to provide differential pay, a state-mandated activity must be “ordered” or “commanded” by the state.⁸</p> <p>Additionally, the administrative activities of calculating and paying the differential salary to the employee under the test claim statute are incidental to, and part and parcel of, providing the employee benefit. These activities do not result in an increased level of educational services provided to the public and therefore, do not constitute a new program or higher level of service.</p> |
|---|---|--|

Staff Analysis

A. Although the Test Claim Statute Applies Uniquely to Local School Districts and Provides a New Benefit to Certificated Employees, the Requirement to Provide Differential Pay Does Not Constitute a New Program or Higher Level of Service, and Does Not Impose Increased Costs Mandated by the State.

1. Differential Pay for Parental Leave Does Not Impose a New Program or Higher Level of Service Because Differential Pay Is an Employee Benefit, and Does Not Increase the Level of Governmental Service Provided to the Public.

Although the test claim statute applies uniquely to school districts, the law requires a showing that the state has imposed a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. A new program or higher level of service exists only when the test claim legislation requires an increase in the *actual level of service provided to*

⁸ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

*the public.*⁹ The courts have consistently held that increases in the cost of providing employee benefits do not increase the actual level of providing a service to the public.¹⁰ Thus, courts have denied reimbursement in cases involving the costs of providing unemployment insurance,¹¹ workers compensation,¹² pensions,¹³ and death benefits.¹⁴

By contrast, courts have found a reimbursable new program or higher level of service when the state required local agencies to provide protective clothing and safety equipment to firefighters “because the increased safety equipment apparently was designed to result in more effective fire protection”¹⁵ In addition, courts have found a reimbursable new program or higher level of service when the state mandated school districts to take specific steps to measure and address racial segregation in public schools.¹⁶ And the California Supreme Court has held that requirements to immediately suspend and recommend expulsion for pupils who possess a firearm at school were intended to provide a new program or higher level of service to the public in the form of “safer schools for the vast majority of students.”¹⁷

In this case, the claimant argues that the test claim statute provides a service to the public, citing the legislative history of the test claim statute that extols the benefits of parental leave to families and society.¹⁸ However, the governmental service provided by school districts is public education;¹⁹ a service which has not been increased by the test claim statute. In fact, the Legislature placed the test claim statute, section 44977.5, in the part of the Education Code that

⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

¹⁰ *County of Los Angeles* (1987) 110 Cal.App.4th 1176, 1194; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 875-878, where the court discusses the two lines of cases as “those measures designed to increase the level of governmental services to the public,” which results in a new program or higher level of service, and those measures “in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased,” which does not, citing *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538; *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 173.

¹¹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

¹³ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

¹⁴ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

¹⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877, citing *Carmel Valley Fire Protection Dist. V. State of California* (1987) 190 Cal.App.3d 521, 537-538.

¹⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 173; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

¹⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

¹⁸ Exhibit C, Claimant’s Rebuttal Comments, pages 2, 4.

¹⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

relates to “Employees”²⁰ and *not* in the part that relates to “Instruction and Services” for pupils.²¹ Additionally, the differential pay is a benefit provided solely to certificated employees on parental leave who are *not* providing educational services. As recognized by the California Supreme Court, employee benefits might generate a higher quality of local employees and, “in a general and indirect sense,” provide the public with a higher level of service.²² But the purpose of article XIII B, section 6 of the California Constitution is to require reimbursement to local government for the costs of carrying out functions peculiar to government, not for compensating local government employees. “A higher cost to local government for compensating its employees is not the same as a higher cost of providing services to the public.”²³

Therefore, staff finds that the differential pay required by the test claim statute does not impose a new program or higher level of service because providing differential pay to certificated employees does not increase the level of governmental service provided to the public.

2. The Differential Pay Required by the Test Claim Statute Does Not Impose Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution.

The claimant alleges that the test claim statute results in increased costs mandated by the state, including costs of \$17,972.86 during 2016 to comply with the test claim statute.²⁴

Staff finds that the differential pay required by the test claim statute does not result in actual increased costs mandated by the state within the meaning of article XIII B, section 6.

After a certificated employee’s sick leave and accumulated sick leave have been exhausted, differential pay is calculated as the difference between the certificated employee’s salary and the salary paid to a substitute teacher. Substitute teachers are generally paid by the day.²⁵ Thus, if a certificated teacher earns \$200 per day, and a substitute teacher is paid \$75 per day, the differential pay to the absent teacher is \$125 per day for the period of time during the 12-week authorized absence, after exhausting sick leave and accumulated sick leave. Therefore, the amount spent by the district on the differential pay and the amount paid to the substitute teacher equals the amount the school district budgeted and would have paid the certificated employee if the certificated employee had not gone on parental leave. The district is not incurring any increased costs for the differential pay.

²⁰ Chapter 3 “Certificated Employees,” of Part 25 “Employees,” of Division 3 “Local Administration.”

²¹ Division 4 of the Education Code (Parts 26-38) “Instruction and Services,” beginning with section 46000.

²² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877, where the Supreme Court reviewed the *City of Richmond* decision.

²³ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196.

²⁴ Exhibit A, Test Claim, pages 11-12.

²⁵ Education Code section 45030.

As recognized in the legislative history of the test claim statute, a school district may have a loss of cost savings as a result of the differential pay requirement because before the test claim statute, only the substitute teacher would be paid during the parental leave period.²⁶ There was no requirement to pay the certificated employee during parental leave. The courts, however, have held that article XIII B, section 6 is not designed to provide reimbursement for a loss of cost savings, but requires a showing of “*increased actual expenditures* of limited tax proceeds that are counted against the local government’s spending limit.”²⁷

Accordingly, the differential pay required by the test claim statute does not impose increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution.

B. The Test Claim Statute Does Not Mandate a New Program or Higher Level of Service to Develop and Implement Internal Policies and Procedures, Training, and Forms for Administration of the Program; or the Administrative Activities to Calculate and Pay the Differential Salary.

Staff finds that the administrative activities to develop and implement internal policies, procedures, and training, and to adopt forms, are not mandated by the plain language of the test claim statute. Although a school district may find that administrative activities are necessary to comply with the requirement to provide differential pay to the employee, a state-mandated activity must be “ordered” or “commanded” by the state.²⁸

Moreover, the administrative activities of calculating and paying the differential salary to the employee under the test claim statute are incidental to, and part and parcel of, providing the employee benefit. These activities do not result in an increased level of educational services provided to the public and therefore, do not constitute a new program or higher level of service. As clarified by the Supreme Court in the 2004 *San Diego Unified School District* case, incidental aspects of law that are designed to implement a statute, like the administrative activities in this case, are not eligible for reimbursement under article XIII B, section 6.²⁹

Accordingly, staff finds that the test claim statute does not mandate a new program or higher level of service to develop and implement internal policies, training, procedures, and forms relating to the administration of the program, or the administrative activities to calculate and pay the differential salary.

Conclusion

²⁶ Exhibit X, Assembly Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015, page 2; Exhibit X, Senate Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015, page 4.

²⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

²⁸ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889, where the court concluded that incidental requirements designed to implement existing federal law are not eligible for reimbursement.

Staff finds that the test claim statute, Statutes 2015, chapter 400, does not impose a reimbursable state-mandated program on school districts.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the Test Claim. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:
Education Code section 44977.5
Statutes 2015, Chapter 400 (AB 375)

Filed on June 2, 2016
By Fresno Unified School District, Claimant

Case No.: 16-TC-01
Certificated School Employees: Parental Leave

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.
(Adopted September 22, 2017)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 22, 2017. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted, rejected, modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote count will be in the adopted Decision], as follows:

| Member | Vote |
|---|-------------|
| Lee Adams, County Supervisor | |
| Ken Alex, Director of the Office of Planning and Research | |
| Richard Chivaro, Representative of the State Controller, Vice Chairperson | |
| Mark Hariri, Representative of the State Treasurer | |
| Sarah Olsen, Public Member | |
| Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson | |
| Carmen Ramirez, City Council Member | |

Summary of the Findings

The test claim statute, Statutes 2015, chapter 400, added section 44977.5 to the Education Code, effective January 1, 2016, to require school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district

employees who qualify under the California Family Rights Act (CFRA) for parental leave, which may be taken for up to 12 school weeks, due to the birth of the employee's child or the placement of a child with the employee as a result of adoption or foster care. Differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute employee, or if no substitute was employed, the amount that would have been subtracted if one had been employed. The Test Claim alleges reimbursable costs for the amount of differential pay provided to certificated school district employees, and one-time costs for developing and implementing internal policies, training, procedures, and forms relating to the administration of the program.

Although the test claim statute applies uniquely to local school districts and provides a new benefit to certificated employees, the law requires a showing that the state has imposed a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. A new program or higher level of service exists only when the test claim statute requires an increase in the *actual level of service provided to the public*.³⁰ The courts have consistently held that increases in the cost of providing employee benefits do not increase the actual level of providing a service to the public.³¹

In this case, the requirement to provide differential pay does not increase the level of governmental service provided to the public. The governmental service provided by school districts is public education.³² Based on the plain language of the test claim statute and the Legislature's placement of the test claim statute in the chapter relating to "Employees,"³³ the Commission finds that differential pay is a benefit provided solely to certificated employees on parental leave, who are *not* engaged in providing educational services to the public.

In addition, the requirement to provide differential pay does not impose increased costs mandated by the state. After a certificated employee's sick leave and accumulated sick leave have been exhausted, differential pay is calculated as the difference between the certificated employee's salary and the salary paid to a substitute teacher. Substitute teachers are generally paid by the day.³⁴ Thus, if a certificated teacher earns \$200 per day, and a substitute teacher is paid \$75 per day, the differential pay to the absent teacher is \$125 per day for the period of time during the 12-week authorized absence, after exhausting sick leave and accumulated sick leave. Therefore, the amount spent by the district on the differential pay and the amount paid to the substitute teacher equals the amount the school district budgeted and would have paid the

³⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

³¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 875-878, where the court discusses the two lines of cases as "those measures designed to increase the level of governmental services to the public," which results in a new program or higher level of service, and those measures "in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased," which does not.

³² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

³³ Chapter 3 "Certificated Employees," of Part 25 "Employees," of Division 3 "Local Administration."

³⁴ Education Code section 45030.

certificated employee if the certificated employee had not gone on parental leave. The district is not incurring any increased costs for the differential pay. A school district may have a loss of cost savings as a result of the differential pay requirement because before the test claim statute, only the substitute teacher would be paid during the parental leave period. There was no requirement to pay the certificated employee during parental leave. The courts, however, have held that article XIII B, section 6 of the California Constitution is not designed to provide reimbursement for a loss of cost savings, but requires a showing of “*increased actual expenditures* of limited tax proceeds that are counted against the local government’s spending limit.”³⁵

Moreover, the administrative activities to develop and implement internal policies, procedures, and training, and to adopt forms, are not mandated by the plain language of the test claim statute. Although a school district may find that administrative activities are necessary to comply with the requirement to provide differential pay to the employee, a state-mandated activity must be “ordered” or “commanded” by the state.³⁶ In addition, the administrative activities of calculating and paying the differential pay to the employee under the test claim statute are incidental to, and part and parcel of, providing the employee benefit. These activities do not provide an increased level of educational service to the public and therefore, do not constitute a new program or higher level of service.

Accordingly, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

- 10/01/2015 The test claim statute, Statutes 2015, Chapter 400, was chaptered.
- 01/01/2016 The test claim statute became effective.
- 12/21/2016 The Fresno Unified School District (claimant) filed the Test Claim with Commission.³⁷
- 02/14/2017 The Department of Finance (Finance) filed comments on the Test Claim.³⁸
- 03/15/2017 The claimant filed rebuttal comments.³⁹
- 07/14/2017 Commission staff issued the Draft Proposed Decision.⁴⁰

II. Background

This Test Claim addresses Statutes 2015, chapter 400, which requires school districts to provide differential pay to K-12 certificated employees for purposes of maternity and paternity leave

³⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

³⁶ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

³⁷ Exhibit A, Test Claim.

³⁸ Exhibit B, Department of Finance Comments on the Test Claim.

³⁹ Exhibit C, Claimant’s Rebuttal Comments.

⁴⁰ Exhibit D, Draft Proposed Decision.

(parental leave) during the 12-week protected leave period under the California Family Rights Act (CFRA) after the employee's sick leave and accumulated sick leave has been exhausted. Differential pay is the difference between the employee's salary and the salary paid to a substitute employee, or that would have been paid to a substitute employee if one had been hired.

Preexisting law provides certificated employees with various types of paid and unpaid leave programs that may be used for disability related to pregnancy and childbirth, and unpaid maternity and paternity leave to care for a new or adopted baby or foster child.

A. Disability and Parental Leave for Female Certificated Employees Under Preexisting Law

1. Pregnancy Disability Leave

Education Code section 44965 requires school districts and county offices of education to give leave to certificated employees (i.e., teachers) who are absent due to pregnancy, miscarriage, childbirth, and childbirth recovery. This leave is considered temporary disability leave and employees are entitled to all the same rights as other persons with temporary disabilities. The length of the leave of absence is to be determined by the employee and the employee's physician, and school district employment policies are to be applied to disability due to pregnancy and childbirth on the same terms and conditions applied to other temporary disability.

Under Government Code section 12945, employees are entitled to four months of unpaid pregnancy disability leave if they are disabled due to pregnancy, childbirth, or related medical conditions, to include lactation. The employee is guaranteed the right to return to her job at the end of the leave. Employers must continue the employee's health and welfare benefits for up to four months of pregnancy disability leave on the same terms as if the employee were working.

Unless the school district participates in the State Disability Insurance Program (SDI),⁴¹ the employee must use available sick leave to be paid during disability due to pregnancy. Sick leave accrues at 10 days per year for full-time employees, and proportionately less for part-time employees.⁴² Unused sick leave accumulates from year to year with no cap and can be transferred (provided the employee worked for a district for at least a year), if the employee subsequently accepts a certified position with another school district.⁴³ School districts are authorized to adopt rules and regulations regarding proof of illness or injury.⁴⁴

2. Differential Pay Leave for Extended Illness or Injury (Including Pregnancy, Childbirth, Miscarriage, or Childbirth Recovery)

⁴¹ Exhibit X, California Teachers Association Website. The California Teachers Association notes that most school districts do not participate in the SDI program. See: <http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx> (accessed on May 23, 2017).

⁴² Education Code section 44978.

⁴³ Education Code section 44979.

⁴⁴ Education Code section 44978.

If the certificated employee has exhausted her available sick leave and remains on temporary leave due to pregnancy, miscarriage, childbirth, and childbirth recovery, there were two ways, under preexisting law, that school districts could pay her for up to five months of the absence.⁴⁵

Under the first method, the employee is paid the difference between her salary and the sum that is actually paid a substitute employee employed to fill the position during her absence. If no substitute is employed, the certificated employee is paid this “differential pay” amount as though the substitute had been employed. The district must make every reasonable effort to secure the services of a substitute employee.⁴⁶ An employee may not be provided more than one five-month period per illness or accident.⁴⁷ If a school year ends before the five-month period is exhausted, the employee may take the balance of the leave in a subsequent school year.⁴⁸ The differential pay statute was amended in 1998 so that the employee’s sick leave, including accumulated sick leave, and the five-month leave period run consecutively, not concurrently.⁴⁹ The 1998 amendment was the subject of the Commission’s *Differential Pay and Reemployment*, 99-TC-02, Statement of Decision, discussed below.

Under the second method, any school district may adopt and maintain in effect a rule that provides 50 percent or more of the employee’s regular salary during the absence; for up to five months.⁵⁰

3. Unpaid Parental Leave

Both federal (Federal Family and Medical Leave Act, or FMLA)⁵¹ and state law (CFRA)⁵² authorize up to 12 weeks of unpaid leave to employees who have worked for an employer for at least 12 months prior to starting the leave, and have actually worked (not counting paid or unpaid time off) 1,250 hours in the past 12 months. Employees may take up to 12 workweeks of unpaid leave in a 12-month period for various family and medical reasons, including for “the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.”⁵³ CFRA only applies to school districts or private employers who employ 50

⁴⁵ Education Code section 44978 states in pertinent part: “Any employee shall have the right to utilize sick leave provided for in this section [sick leave] and the benefit provided by Section 44977 [differential pay] for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.”

⁴⁶ Education Code section 44977(a).

⁴⁷ Education Code section 44977(b)(2).

⁴⁸ Education Code section 44977(b)(2).

⁴⁹ Education Code section 44977(b)(1).

⁵⁰ Education Code section 44983.

⁵¹ 29 United States Code section 2611, et seq.

⁵² Government Code sections 12945.2 and 19702.3.

⁵³ Government Code section 12945.2(c)(3)(A).

employees within 75 miles of the worksite where that employee is employed.⁵⁴ Upon granting the leave request, employers must provide the employee a guarantee of employment in the same or a comparable position when the leave period ends.⁵⁵

If the employee is on pregnancy disability leave, she may take her 12 weeks of unpaid parental leave under CFRA after her physician clears her to return to work. If she is not on pregnancy disability leave, she may take her 12 weeks of unpaid parental leave upon the birth or placement of her child or at any time during the subsequent year.⁵⁶

To receive pay during CFRA leave, the employee must use accrued vacation or other accrued leave. For leave in connection with a birth, adoption, or foster care of a child, sick leave may only be used if mutually agreed to by the employer and the employee.⁵⁷

Although most school districts do not participate in the SDI program, employees of those that do may receive paid pregnancy disability benefits of roughly half of their current salary. For a pregnancy without complications, the benefit period is generally from four weeks before the due date to six weeks after the delivery. If the pregnancy prevents the employee from working before or after that period, she may receive benefits for a longer period of time if her doctor verifies the need for additional leave.⁵⁸

B. Parental Leave for Male Certificated Employees Under Preexisting Law

The FMLA and CFRA also provide male certificated employees with 12-weeks of *unpaid* parental leave under the same terms as female employees as described above, which can be taken upon the birth or placement of the child, or at any time during the subsequent year.

Male certificated employees may also be able use their paid sick leave for a leave of absence due to “personal necessity.” This leave may last up to seven days unless more time is specified in the district’s bargaining agreement. School districts adopt rules and regulations regarding the manner and proof of personal necessity.⁵⁹

C. The Test Claim Statute (Stats. 2015, ch. 400; Ed. Code, § 44977.5) – Differential Pay for Certificated Employees on Parental Leave

The test claim statute added section 44977.5 to the Education Code, effective January 1, 2016, to provide differential pay to certificated K-12 school district employees who qualify for CFRA and

⁵⁴ Government Code section 12945.2(b).

⁵⁵ Government Code section 12945.2(a).

⁵⁶ Exhibit X, California Teachers Association Website: <http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx> (accessed on May 23, 2017).

⁵⁷ Government Code section 12945.2(e).

⁵⁸ Exhibit X, California Teachers Association Website: <http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx> (accessed on May 23, 2017).

⁵⁹ Education Code section 44981.

who take maternity or paternity leave for up to 12 school weeks due to childbirth or adoption or foster care placement, as follows:⁶⁰

- (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of maternity or paternity leave pursuant to Section 12945.2 of the Government Code [the CFRA] for a period of up to 12 school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.
- (b) For purposes of subdivision (a):
 - (1) The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave pursuant Section 12945.2 of the Government Code.
 - (2) An employee shall not be provided more than one 12-week period per maternity or paternity leave. However, if a school year terminates before the 12-week period is exhausted, the employee may take the balance of the 12-week period in the subsequent school year.
 - (3) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.
- (c) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing school district.

⁶⁰ Education Code section 44977.5 was amended by Statutes 2016, chapter 883, effective January 1, 2017, to expand the population of employees entitled to this benefit, amending subdivision (d) to state: “Notwithstanding subdivision (a) of Section 12945.2 of the Government Code [the CFRA], a person employed in a position requiring certification qualifications is *not* required to have 1,250 hours of service with the employer during the previous 12-month period in order to take parental leave pursuant to this section.” (Emphasis added.) Before this amendment, differential pay was provided only to those certificated employees who, under the CFRA, worked 1,250 hours in the past 12 months. The 2016 statute also expanded differential pay for K-14 classified school employees and community college faculty on parental leave for the 12 weeks of unpaid leave. The Commission has not received a test claim filing on Statutes 2016, chapter 883 and thus, makes no determination on that statute.

- (d) To the extent that this section conflicts with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, this section shall not apply until expiration or renewal of that collective bargaining agreement.
- (e) For purposes of this section, “maternity or paternity leave” means leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

Under the test claim statute, the certificated employee is required to exhaust existing sick leave and accumulated sick leave benefits first, before he or she is eligible for differential pay during the 12-week parental leave period. Differential pay is calculated as the difference between the employee’s salary and the salary paid to a substitute employee. As the statute states, differential pay is “the amount deducted from the salary due [the certificated employee] for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.” For example, if a teacher earns \$200 per day, and a substitute teacher is paid \$75 per day, the differential pay to the absent teacher is \$125 per day for the period of time during the 12-week authorized absence, after exhausting sick leave and accumulated sick leave.⁶¹ Therefore, when the differential pay starts after sick leave is exhausted, the differential pay to the certificated employee on leave and the pay given to a substitute teacher equals the amount the school district budgeted for the certificated employee and would have paid the certificated employee if the certificated employee had not gone out on parental leave. As recognized in the May 26, 2015 analysis of the bill by the Assembly Appropriations Committee, the statute may result in a loss of cost savings to the district as a result of not paying the employee on leave:

Employer costs based on the differential pay program should not exceed what is normally paid to a school employee who would otherwise be working; however, this bill may place additional cost pressures on school district budgets to the extent they no longer experience cost savings as a result of not paying employees during a leave of absence due to maternity or paternity leave.⁶²

⁶¹ See Exhibit X, Assembly Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015, page 3, which uses the following example: if the certificated employee is normally paid \$50,000 and the substitute pay is \$35,000, then the certificated employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick leave. Substitute teachers are generally paid by the day and do not receive an annual salary. (Ed. Code, § 45030.)

⁶² Exhibit X, Assembly Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015, page 2.

Similarly, the Senate Appropriations Committee states that school districts “will not realize the savings attributed to unpaid maternity and paternity protected leave that they currently experience. . . . [E]mployer costs based on the differential pay program should not exceed what is normally paid to a school employee who would otherwise be working.”⁶³ The initial reason for enacting the bill, according to the author, is stated in the legislative history:

According to the author, currently, certificated school employees can only take up to six or eight weeks of paid leave when they have a baby. Six or eight weeks is insufficient time for a new parent to care for and bond [sic] with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave.

[¶] . . . [¶]

The U.S. is the only industrialized nation that doesn't mandate that parents of newborns get paid leave.⁶⁴

The later-drafted Senate Floor Analysis states additional reasons for the bill:

According to the author's office, “Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression.” The author's office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave.⁶⁵

D. Commission Statement of Decision on *Differential Pay and Reemployment*, 99-TC-02

On July 31, 2003, the Commission adopted a decision partially approving the Test Claim, *Differential Pay and Reemployment*, 99-TC-02, which amended Statutes 1998, Chapter 30, amending Education Code section 44977 and adding Education Code 44978.1.

As originally enacted before 1975, Education Code section 44977 required that certificated employees who are absent from work on account of illness or accident (including pregnancy, miscarriage, childbirth, and childbirth recovery) to receive differential pay (i.e., the difference between the employee's salary and the sum the school district paid substitute employees who

⁶³ Exhibit X, Senate Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015, page 4.

⁶⁴ Exhibit X, Assembly Committee on Education, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015, page 5.

⁶⁵ Exhibit X, Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015, page 4.

filled in during the absence) for a period of up to five school months. This requirement was subject to alternative interpretations. Education Code section 44978, in addition to providing a minimum of ten days of annual sick leave for full-time certificated employees, states that “Section 44977 relating to compensation, shall not apply to the first 10 days of absence on account of illness or accident.” Thus, differential pay in section 44977 was calculated by many school districts to run after the exhaustion of annual sick leave, and *concurrently* with any accumulated sick leave the teacher may have carried over from previous years. This interpretation was supported by case law in the First and Second District Courts of Appeal and several opinions of the Attorney General.⁶⁶

The 1998 test claim statute, however, required the differential pay to start after the exhaustion of sick leave and accumulated sick leave as follows: “[t]he sick leave, including accumulated sick leave, and the five-month [differential pay] period shall run consecutively,” and the claimant alleged that this change resulted in increased costs mandated by the state.

The Commission concluded that the change in the calculation of differential pay from concurrent to consecutive with accrued sick leave may result in an increased cost to school districts in some instances, but does not provide an increased level of service to the public. Therefore, the Commission found that the 1998 amendment to Education Code section 44977 did not impose a new program or higher level of service within the meaning of article XIII B, section 6 for the amount of differential pay to the employee.⁶⁷ However, the Commission approved reimbursement for the one-time administrative activity for changing the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.⁶⁸

The 1998 test claim statute also added Education Code section 44978.1, which states that certificated employees who remain unable to return to their original duties due to illness or injury after all sick leave and differential pay is exhausted shall, if not placed in another position, be placed on a reemployment list. The Commission concluded that Education Code section 44978.1 imposed a reimbursable state-mandated program for the following activities:

- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes

⁶⁶ Commission on State Mandates, Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003, pages 6 and 7 (citing *Napa Valley Educators’ Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243; *Lute v. Covina Valley Unified School Dist.* (1988) 202 Cal.App.3d 1181; 29 Ops.Atty.Gen. 62, 63 (1957); 30 Ops.Atty.Gen. 307, 309 (1957); 53 Ops.Atty.Gen. 111, 113 (1970).)

⁶⁷ Commission on State Mandates, Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003, pages 8-9.

⁶⁸ Commission on State Mandates, Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003, pages 7, 12.

the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.)

- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not reimbursement of salary and benefits for the employee once they return to work.)⁶⁹

Costs incurred to comply with the *Differential Pay and Reemployment* program are currently reimbursed under the education mandates block grant.⁷⁰

III. Positions of the Parties

A. Fresno Unified School District

The claimant maintains that the test claim statute imposes a reimbursable state-mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant alleges reimbursable costs for differential pay for up to 12 school weeks to certificated school district employees who exhaust their sick leave. Claimant also alleges one-time costs for developing and implementing internal policies, training, and procedures and forms relating to the administration of the program. The claimant's declaration, filed under penalty of perjury, states that the test claim statute resulted in total actual costs to the claimant of \$17,972.86 during 2016.⁷¹ The claimant, however, does not identify which expenses were actually incurred, or the cost of each alleged activity to implement the test claim statute.

In rebuttal comments, the claimant distinguishes the *Differential Pay and Reemployment*, 99-TC-02, Test Claim Statement of Decision, citing to the legislative history of the test claim statute in the present case, to show that differential pay for certificated employees provides an enhanced service to the public. According to the claimant:

The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child's future mental, physical, social and emotional health in life impacted by the strength of the relationship with both of the child's parents. The test claim does not involve concurrent and consecutive sick leave that is limited to a change in calculating differential pay.⁷²

The claimant further argues that the statute enhances the level of service provided to the public because, according to the legislative history:

1. Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond.

⁶⁹ Commission on State Mandates, Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003, pages 11-12.

⁷⁰ Government Code section 17581.6(e)(19).

⁷¹ Exhibit A, Test Claim, pages 11-12.

⁷² Exhibit C, Claimant's Rebuttal Comments, page 4.

2. A child’s ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship affects a child’s future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent, known as the attachment bond, which occurs naturally as a baby’s needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy.
3. Overall, paid family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they are more likely to choose to remain in the labor market; and paid parental leave is associated with higher employment in economies around the world. (AB 375; Assembly Third Reading – May 4, 2015)
4. Forcing teachers and other certificated employees to take entirely unpaid leave after only six to eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression.
5. The author’s office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave. (Senate Rules Committee, July 8, 2015).⁷³

Claimant’s rebuttal comments also distinguish *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478 and *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; cases cited by the Department of Finance to argue that the test claim statute does not impose a new program or higher level of service. Claimant argues that unlike the statutes in those cases, this test claim statute imposes unique requirements on school districts and thus, constitutes a state-mandated new program or higher level of service.⁷⁴

⁷³ Exhibit C, Claimant’s Rebuttal Comments, page 2.

⁷⁴ Exhibit C, Claimant’s Rebuttal Comments, pages 3-4. The Claimant’s Rebuttal Comments (Exhibit C, p. 3, fn. 1) also state: “Finance’s comments failed to comply with Cal. Code Regs., tit. 2, §§1183.2 and 1187.5 and shall be excluded from the Commission’s ultimate findings and the record.” These regulations require all representations of fact, including written comments and supporting documentation to be signed at the end of the document by an authorized representative, with a declaration that they are true and complete to the best of the representative’s personal knowledge or information or belief. Although the Finance’s comments are not signed under penalty of perjury with the declaration, the issues presented in this Test Claim are pure questions of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.) Finance’s comments relevant to test claim findings contain arguments interpreting the law and do not include representations of fact.

B. Department of Finance

The Department of Finance (Finance) concurs that recognizing one-time activities (such as for developing and implementing internal policies, training, procedures and forms relating to the administration of the program) as reimbursable activities would be consistent with the Commission’s 2003 decision in *Differential Pay and Reemployment*, 99-TC-02. Finance anticipates that ongoing costs associated with the administrative activities for this program would “likely be less than the low tens of thousands of dollars annually.”⁷⁵

Finance also states that the cost of differential pay compensation to certificated employees on maternity or paternity leave is not a state-reimbursable cost for the same reasons stated in the Statement of Decision for the Test Claim, *Differential Pay and Reemployment*, 99-TC-02. Courts have found that a higher cost of employee compensation is not the same as a higher cost of providing a service to the public.⁷⁶

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 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.”⁷⁷ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁷⁸

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁷⁹
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or

⁷⁵ Exhibit B, Department of Finance Comments on the Test Claim, page 1.

⁷⁶ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484.

⁷⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁷⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874.

- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁸⁰
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁸¹
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁸²

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 of the California Constitution.⁸³ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁸⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁸⁵

A. Although the Test Claim Statute Applies Uniquely to Local School Districts and Provides a New Benefit to Certificated Employees, the Requirement to Provide Differential Pay Does Not Constitute a New Program or Higher Level of Service, and Does Not Impose Increased Costs Mandated by the State.

As stated in the background, Education Code section 44977.5, as amended by Statutes 2015, chapter 400, provides for differential pay for up to 12 weeks to a certificated school employee who is absent due to maternity or paternity leave. “Differential pay” is the difference between the employee’s salary and the sum that is actually paid a substitute employee who fills the employee’s position during his or her absence or, if no substitute is employed, the amount that would have been paid to a substitute had one been employed.

The Commission finds that the differential pay required by the test claim statute increases an employee benefit, but does not increase the level of governmental service provided to the public,

⁸⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).

⁸¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁸² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁸³ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁸⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁸⁵ *County of Sonoma v. Commission on State Mandates* 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

nor does it result in increased costs mandated by the state. Thus, the differential pay required by the test claim statute does not constitute a reimbursable state-mandated program.

1. Differential Pay for Parental Leave Does Not Impose a New Program or Higher Level of Service Because Differential Pay Is an Employee Benefit, and Does Not Increase the Level of Governmental Service Provided to the Public.

The courts have consistently held that increases in the cost of providing employee compensation or benefits are not subject to reimbursement as state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6. Rather, a new program or higher level of service exists only when the test claim statute requires an increase in the *actual level of governmental service provided to the public*.⁸⁶

In 1987, the California Supreme Court decided *County of Los Angeles v. State of California*,⁸⁷ and for the first time, defined a “new program or higher level of service” within the meaning of article XIII B, section 6. Counties were seeking reimbursement for legislation that required local agencies to provide the same level of workers’ compensation benefits to their employees as private individuals or organizations had to provide. The Supreme Court recognized that workers’ compensation is not a new program and was left to decide whether the legislation imposed a higher level of service on local agencies.⁸⁸ Although the court defined a “program” to include “laws which, to implement a state policy, impose unique requirements on local governments,” the court emphasized that a new program or higher level of service requires “state mandated increases in the services provided by local agencies in existing programs.”⁸⁹

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. *Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.”*⁹⁰

The court continued:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to

⁸⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877. See also pages 875-878, where the court discusses the two lines of cases as “those measures designed to increase the level of governmental services to the public,” which results in a new program or higher level of service, and those measures “in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased,” which does not.

⁸⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

⁸⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁸⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. Emphasis added.

those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public.*⁹¹

Applying these principles, the court held that reimbursement for the increased costs of providing workers' compensation benefits to employees of local agencies was not required by the California Constitution. The court stated:

Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers ... In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.⁹²

Seventeen years later, the California Supreme Court summarized its holding in *County of Los Angeles* by stating that although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public."⁹³

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates*,⁹⁴ involving legislation requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System (PERS) and the workers' compensation system. This resulted in survivors of local safety members of PERS who were killed in the line of duty receiving both a death benefit under worker's compensation and a special death benefit under PERS, instead of the greater of the two as under prior law. The court held that the legislation did not constitute a new program or higher level of service even though the benefits might generate a higher quality of local safety officers and thereby, in a general and indirect sense, provide the public with a higher level of service by its employees.⁹⁵ The court in *City of Richmond* stated:

Increasing the costs of providing services cannot be equated with requiring an increased level of service under [article XIII B,] section 6 ... A higher cost to

⁹¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57. Emphasis added.

⁹² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58, footnote omitted.

⁹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 875.

⁹⁴ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

⁹⁵ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1195; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877, where the Supreme Court reviewed the *City of Richmond* decision.

the local government for compensating its employees is not the same as a higher cost of providing services to the public.⁹⁶

The court further clarified that "[a]lthough a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate."⁹⁷

Two other published cases have reached the same conclusion regarding employee compensation or benefits. In *City of Anaheim*, the court found that a temporary increase in PERS benefits for retired employees, resulting in higher contribution rates for local government, did not constitute a new program or higher level of service to the public.⁹⁸ As the court said: "Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public."⁹⁹ And in *City of Sacramento*, the California Supreme Court determined that the requirement to provide unemployment insurance to the city's employees was not a service to the public.¹⁰⁰

In 2004, the California Supreme Court summarized the above line of cases in *San Diego Unified School Dist.*, as those "in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased."¹⁰¹ The Supreme Court stated: "simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514."^{102, 103}

Based on these cases, a new program or higher level of service requires more than increased costs experienced uniquely by local government. A new program or higher level of service requires a showing that the state has mandated an increase in the actual level of governmental

⁹⁶ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196.

⁹⁷ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

⁹⁸ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484.

⁹⁹ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484.

¹⁰⁰ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67.

¹⁰¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 878.

¹⁰² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877. Emphasis in original.

¹⁰³ Similarly, in 2006, the Second District Court of Appeal issued an unpublished decision in *CSAC-Excess Insurance Authority v. Commission on State Mandates*, finding that legislation, which provided an evidentiary presumption of industrial causation in workers' compensation cases for cancer and lower back injury claims for local government employees (firefighters, peace officers, and publicly-employed lifeguards), did not provide a service to the public even though the legislation was addressed only to local government. (Exhibit X, *CSAC-Excess Insurance Authority v. Commission on State Mandates*, December 20, 2006, B188169; review denied by Supreme Court March 21, 2007, nonpublished opinion.)

service provided to the public.¹⁰⁴ For example, the courts have found a reimbursable new program or higher level of service when the state imposed a new requirement on local agencies to provide protective clothing and safety equipment to firefighters “because the increased safety equipment apparently was designed to result in more effective fire protection”¹⁰⁵ In addition, courts have found a reimbursable new program or higher level of service when the state mandated school districts to take specific steps to measure and address racial segregation in public schools. The court found this was a higher level of service to the extent the requirements exceeded federal law and case law requirements by mandating school districts to undertake defined actions that were merely advisory under prior law.¹⁰⁶ The California Supreme Court has held that requirements to immediately suspend and recommend expulsion for pupils who possess a firearm at school were intended to provide a new program or higher level of service to the public in the form of “safer schools for the vast majority of students.”¹⁰⁷ The courts have also found a new program or higher level of service when the state shifted the cost of educating pupils at state schools for the severely handicapped to local school districts; a program that was previously administered and funded entirely by the state.¹⁰⁸

In this case, the claimant argues that the test claim statute provides a service to the public, citing the legislative history of the test claim statute that extols the benefits of parental leave to families and society. According to the claimant: “The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child’s future mental, physical, social and emotional health in life impacted by the strength of the relationship with both of the child’s parents.”¹⁰⁹

However, the governmental service provided by school districts is public education,¹¹⁰ which has not been increased by the test claim statute. In fact, the Legislature placed section 44977.5 in the part of the Education Code that relates to “Employees”¹¹¹ and *not* in the part that relates to

¹⁰⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.

¹⁰⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877, citing *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538.

¹⁰⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 173; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

¹⁰⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

¹⁰⁸ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836.

¹⁰⁹ Exhibit C, Claimant’s Rebuttal Comments, pages 2, 4.

¹¹⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

¹¹¹ Chapter 3 “Certificated Employees,” of Part 25 “Employees,” of Division 3 “Local Administration.”

“Instruction and Services” for pupils.¹¹² Based on the plain language and placement of the test claim statute in the Education Code, the Commission finds that differential pay is a benefit provided solely to certificated employees who are *not* engaged in providing educational services to the public. In this regard, the test claim statute resembles the statutes at issue in the cases where reimbursement was denied, which involved unemployment insurance,¹¹³ workers compensation,¹¹⁴ pension,¹¹⁵ and death benefits.¹¹⁶ In those cases, employment benefits were also provided to employees who are not engaged in their official duties. As recognized by the California Supreme Court, employee benefits might generate a higher quality of local employees and, “in a general and indirect sense,” provide the public with a higher level of service.¹¹⁷ But the purpose of article XIII B, section 6 is to require reimbursement to local government for the costs of carrying out functions peculiar to government, not for compensating local government employees. “A higher cost to local government for compensating its employees is not the same as a higher cost of providing services to the public.”¹¹⁸

Therefore, the Commission finds that the differential pay required by the test claim statute does not impose a new program or higher level of service because providing differential pay to certificated employees does not increase the level of governmental service provided to the public.

2. The Differential Pay Required by the Test Claim Statute Does Not Impose Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution.

The claimant alleges that the test claim statute results in increased costs mandated by the state, and filed a declaration by the Executive Officer of Fiscal Services from Fresno Unified School District, who declares under penalty of perjury that the district incurred actual costs of \$17,972.86 during 2016 to comply with the test claim statute.¹¹⁹ The claimant, however, does not identify which expenses were actually incurred, or provide any evidence of the cost of each alleged activity to implement the test claim statute.

The purpose of article XIII B, section 6 is to prevent the state from forcing new programs or higher levels of service on local governments that require “increased actual expenditures” of

¹¹² Division 4 of the Education Code (Parts 26-38) “Instruction and Services,” beginning with section 46000.

¹¹³ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹¹⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

¹¹⁵ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.

¹¹⁶ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

¹¹⁷ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1195; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877, where the Supreme Court reviewed the *City of Richmond* decision.

¹¹⁸ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196, 1197.

¹¹⁹ Exhibit A, Test Claim, pages 11-12.

their limited tax revenues that are counted against the local government's annual spending limit in accordance with articles XIII A and XIII B.¹²⁰ The Commission finds, as a matter of law, that the differential pay required by the test claim statute does not result in actual increased costs mandated by the state within the meaning of article XIII B, section 6.

As indicated in the Background, after a certificated employee's sick leave and accumulated sick leave have been exhausted, differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute teacher. Substitute teachers are generally paid by the day.¹²¹ Thus, if a certificated teacher earns \$200 per day, and a substitute teacher is paid \$75 per day, the differential pay to the absent teacher is \$125 per day for the period of time during the 12-week authorized absence, after exhausting sick leave and accumulated sick leave. The amount spent by the district on the differential pay and the amount paid to the substitute teacher equals the amount the school district budgeted and would have paid the certificated employee if the certificated employee had not taken parental leave. Under the Education Code, school districts must adopt their annual budgets by July 1.¹²² Between 50 to 60 percent of the money apportioned to the district from the state is required to be expended for salaries of certificated classroom teachers, and this amount is included in the budget.¹²³ Thus, the district is not incurring an increased cost for the differential pay. Rather, the district is simply paying part of the teacher's budgeted salary to the teacher, and part to the substitute teacher. Thus, the test claim statute does not require "increased actual expenditures" of a school district's limited tax revenues that are counted against the district's annual spending limit for the differential pay.

As recognized in the legislative history of the test claim statute, a school district may have a loss of cost savings as a result of the differential pay requirement because before the test claim statute, only the substitute teacher would be paid during the parental leave period.¹²⁴ There was no prior requirement to pay the certificated employee during parental leave. The courts, however, have held that article XIII B, section 6 is not designed to reimburse a loss of cost savings. In *County of Sonoma v. Commission on State Mandates*, the court concluded that reimbursement is not required for a loss of revenue; "it is the expenditure of tax revenues of local

¹²⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 736; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284; California Constitution, article XIII B, sections 1 and 8(a)-(c), (h).

¹²¹ Education Code section 45030, which provides that "The governing board of any school district may employ such substitute employees of the district as it deems necessary and shall adopt and make public a salary schedule setting the daily or pay period rate or rates for substitute employees."

¹²² Education Code section 42127(a)(2)(A).

¹²³ Education Code sections 41370, 41372(b); and California School Accounting Manual, which requires budgeting for certificated employees separately. See pages 210-215 of the Manual: <http://www.cde.ca.gov/fg/ac/sa/documents/csam2016complete.pdf> (accessed on May 31, 2017).

¹²⁴ Exhibit X, Assembly Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended May 4, 2015, page 2; Exhibit X, Senate Committee on Appropriations, Analysis of Assembly Bill No. 375 (2015-2016 Reg. Sess.) as amended July 8, 2015, page 4.

governments that is the appropriate focus of section 6.”¹²⁵ In that case, several counties challenged a Commission decision denying a test claim on a statute that reduced property taxes previously allocated to local governments and simultaneously placed, in an amount equal to the amount reduced, into the Educational Revenue Augmentation Fund for distribution to school districts.¹²⁶ The court found that the counties’ tax revenues were not expended. “No invoices were sent, no costs were collected, and no charges were made against the counties . . .”¹²⁷ As the court explained, reimbursement is only required when a test claim statute results in increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit:

An examination of the intent of the voters and the language of Proposition 4 [the source of article XIII B, section 6] itself supports our conclusion that Proposition 4 was aimed at controlling and capping government spending, not curbing changes in revenue allocations [between counties and school districts]. Section 6 is an obvious compliment to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in *increased actual expenditures* of limited tax proceeds that are counted against the local government’s spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned with ‘costs’ incurred by local government as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas.¹²⁸

Accordingly, the Commission finds that the differential pay required by the test claim statute does not impose increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution.

B. The Test Claim Statute Does Not Mandate a New Program or Higher Level of Service to Develop and Implement Internal Policies and Procedures, Training, and Forms for the Administration of the Program; or the Administrative Activities to Calculate and Pay the Differential Salary.

The claimant alleges that the test claim statute mandates a new program or higher level of service for administrative activities, such as developing and implementing internal policies, training, and adopting forms to administer differential pay for certificated employees on maternity and paternity leave.¹²⁹ Finance states that one-time reimbursement for these types of administrative activities would be consistent with the Statement of Decision for the *Differential Pay and*

¹²⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

¹²⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1269.

¹²⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

¹²⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284 (emphasis added).

¹²⁹ Exhibit A, Test Claim, pages 8-9.

Reemployment Program, 99-TC-02.¹³⁰ In that decision, the Commission approved reimbursement for the one-time administrative activity of changing the process for calculating the five-month differential pay period from running concurrently to consecutively with accumulated sick leave.¹³¹

The Commission finds that these activities are not mandated by the state, and do not impose a new program or higher level of service.

The administrative activities to develop and implement internal policies, procedures, and training, and to adopt forms, are not mandated by the plain language of the test claim statute. The test claim statute states in pertinent part: "...the amount deducted from the salary due ... [the certificated employee] for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence."¹³² Although a school district may find that administrative activities are necessary to comply with the requirement to provide differential pay to the employee, a state-mandated activity must be "ordered" or "commanded" by the state.¹³³

Moreover, the administrative activities of calculating and paying the differential salary to the employee under the test claim statute are incidental to, and part and parcel of, providing the employee benefit. These activities do not result in an increased level of educational services provided to the public and, thus, do not constitute a new program or higher level of service. "Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate."¹³⁴ As clarified by the Supreme Court in the 2004 *San Diego Unified School District* case, incidental aspects of law that are designed to implement a statute, like the administrative activities in this case, are not eligible for reimbursement under article XIII B, section 6.¹³⁵

Although this finding may be viewed as a departure from the Commission's Test Claim Statement of Decision *Differential Pay and Reemployment*, 99-TC-02, Commission decisions are not precedential. Like any other administrative agency, the Commission is free to depart from its prior findings if its determination is supported by law and the evidence in the record, and is not

¹³⁰ Exhibit B, Department of Finance Comments on the Test Claim, page 1.

¹³¹ Statement of Decision, *Differential Pay and Reemployment*, 99-TC-02, July 31, 2003, pages 7, 12.

¹³² Education Code, section 44977.5(a) (Stats. 2015, ch. 400). Note that this code section has since been amended by Statutes 2016, chapter 883, over which the Commission has no jurisdiction and makes no finding.

¹³³ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³⁴ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

¹³⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889, where the court concluded that incidental requirements designed to implement existing federal law are not eligible for reimbursement.

arbitrary in itself.¹³⁶ In addition, the Statement of Decision in *Differential Pay and Reemployment*, 99-TC-02, was adopted before the California Supreme Court clarified the law on this issue in the *San Diego Unified School District* case.¹³⁷

Accordingly, the Commission finds that the test claim statute does not mandate a new program or higher level of service to develop and implement internal policies, training, procedures, and forms relating to the administration of the program, or the administrative activities to calculate and pay the differential salary.

V. Conclusion

For the reasons stated above, the Commission finds that Statutes 2015, chapter 400, does not impose a reimbursable state-mandated program on school districts. The Commission denies the Test Claim.

¹³⁶ *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776-777; 72 Opinions of the California Attorney General 173, 178, footnote 2 (1989) [“We do not question the power of an administrative agency to reconsider a prior decision for the purpose of determining whether that decision should be overruled in a subsequent case. It is long settled that due process permits substantial deviation by administrative agencies from the principle of stare decisis.”]

¹³⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 14, 2017, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Certificated School Employees: Parental Leave, 16-TC-01

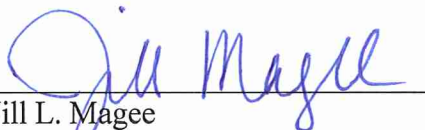
Education Code Section 44977.5;

Statutes 2015, Chapter 400 (AB 375)

Fresno Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 14, 2017 at Sacramento, California.



Jill L. Magee

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Last Updated: 3/22/17

Claim Number: 16-TC-01

Matter: Certificated School Employees: Parental Leave

Claimant: Fresno Unified School District

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August 04, 2017
**Commission on
State Mandates**

August 4, 2017

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Re: Case Name: Certificated School Employees: Parental Leave (16-TC-01)
Comments to Draft Proposed Decision
Claimant: Fresno Unified School District

Dear Ms. Halsey:

Fresno Unified School District (“Claimant”) files the following comments in response to the Draft Proposed Decision. (“DPD”)

A. Introduction

The claimant timely filed the test claim on December 21, 2016. The test claim alleges reimbursable costs mandated by the state for school districts to provide differential pay benefits of up to 12 weeks, if the employee is absent on account of maternity or paternity leave, pursuant to the requirements in Statutes of 2015, Chapter 400, A.B. No 375. On January 17, 2017, the Commission found the filing to be complete.

The DPD concludes:

“Although the test claim statute applies uniquely to local school districts and provides a new benefit to certificated employees, the differential pay does not increase the level of service provided to the public and thus, does not constitute a new program or higher level of service, and does not impose increased costs mandated by the state.” (DPD; p.1.)

Certificated School Employees: Parental Leave (16-TC-01)

B. Argument

Test claim statute applies uniquely to local school districts and imposes increased costs.

Procedures governing the constitutional requirement of reimbursement under Article XIII B, section 6, are set forth in Government Code (“Gov. Code”) section 17500, et seq. The Commission on State Mandates (“Commission”) (Gov. Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. (Gov. Code, § 17551.) Government Code section 17561, subdivision (a), provides that “The state shall reimburse each ... school district for all ‘costs mandated by the state,’ as defined in section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” to mean, in relevant part,

“any increased costs which a ... school district is required to incur ... as a result of any statute ... 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.” (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 872 (2004).)

The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state, since administrative activities and the payment for differential pay for public school teachers, due to maternity or paternity leaves, would constitute a “program.”

“...when the voters adopted Article XIII B, § 6, their intent was to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.” (*City of Los Angeles v. State of California*, 43 Cal. 3d 46 (1987).

The drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state (*Id.*)

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Test Claim Statute, Statutes of 2015, Chapter 400, added section 44977.5 to the Education Code, effective January 1, 2016, to require school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave), which may be taken for up to 12 school weeks, due to the birth of the employee's child, or the placement of a child with the employee as a result of adoption or foster care.

Differential pay is calculated as the difference between the employee's salary and the salary paid to a substitute employee, or if no substitute was employed, the amount that would have been subtracted if one had been employed. The Test Claim alleges reimbursable costs for differential pay provided to certificated school district employees, and one-time costs for developing and implementing internal policies, training, procedures, and forms relating to the administration of the program.

Test Claim Statute increases the level of service to the public in providing higher student test scores, reduces gap in education, avoids costly turnover, and retains the valued expertise, skills, and perspective of teachers who are mothers.

General Public

Children receiving the benefits of a parent receiving paternal leave are impacted by the strength of the relationship with the primary caretaker. Less parental leave has been positively correlated with *lower cognitive test scores* and higher rates of behavioral problems. (Senate Floor Analysis 8-31-15; http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375) A study indicates *higher education, IQ*, and income levels in adulthood for children of mothers who used maternity leave — the biggest effect comes for children from lower-educated households. The researchers cited this as a significant discussion for policymakers to have, as it could reduce the *existing gap in education* and income in the US. (<http://ftp.iza.org/dp5793.pdf>)

The California Teachers Association in support of the legislation stated,

“Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship impacts a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy. Overall, paid

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family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they're more likely to choose to remain in the labor market, and paid parental leave is associated with higher employment in economies around the world. With today's modern and creative family structures, paternity leave after the birth of a child means both caregivers will more involved in a child's direct care nine months later – changing diapers, feeding, bathing – than a parent who doesn't take leave. Also, paternity leave results in more competent and committed parents later in their children's lives, shared responsibilities with long term societal benefits."

(Senate Floor Analysis: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375; September 3, 2015.)

The legislation author's office asserts that six or eight weeks is insufficient time for a new parent to care for and bond with their child. Prior to the test claim statute, if a certificated employee desired to take off more time to spend with their newborn, they were obligated to take unpaid leave.

Protected Leave

The Federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provide certain employees up to 12 weeks of unpaid, job-protected leave for a year for the purpose of bonding with a child, care for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave, as if employees continued to work instead of taking leave. However, there is no pay associated with the FMLA and CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are the only employment protected leaves.

A study of European leave policies by the University of North Carolina found that paid-leave programs can substantially reduce infant mortality rates and better a child's overall health. (<http://www.sciencedirect.com/science/article/pii/S0167629600000473>)

Employees

Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee. School teachers, after taking parental leave, are more likely to return to the classroom providing experienced level of service to the general public. Absent the parental leave, a substitute teacher, often without teaching credentials or with less experience, would teach students for longer periods. As such, school districts are providing, and the public is receiving, an increase in the quality of public education, a higher level of service, with the return of the teacher to the classroom.

Certificated School Employees: Parental Leave (16-TC-01)

Increase costs

Prior to the Test Claim Statute, school districts were not required to provide differential pay after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for maternity and paternity leave (parental leave). With the new legislation, school districts will incur increased costs, salary for three months, when the employee is receiving the parental leave.

The legislation requires after a certificated employee's sick leave and accumulated sick leave have been exhausted, the employee receives differential pay, the difference between the certificated employee's salary and the salary paid to a substitute teacher. (DPD, p. 6)

The decisive factor is not a District's budget but rather actual costs. Though the estimated annual costs for employees may be included in the local agency's annual budget, the DPD is misguided to conclude that a School District is not incurring increased costs when the employee receives paternal leave differential pay. The shift in funding of a new program from the state to a local entity violates the intent of Section 6 of Article XIII B of the California Constitution to preclude the state from shifting to local agencies costs for new legislation. (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 876 (2004).

In *Carmel Valley Fire Protection Dist. v. State of California*, 190 Cal. App. 3d 521, 537–538, (1987); an executive order required that county firefighters be provided with protective clothing and safety equipment, to provide a higher level of service to the public. In this test claim before the Commission, the additional employee paid leave also provides a higher level of service to the public. Previous mandates that denied reimbursement did not exclusively apply to public education or provide a higher level of service. (unemployment insurance, workers' compensation, pensions, and death benefits.)

PERS Test Claim Decision Not Applicable

In *City of Anaheim v. State of California*, the court affirmed a denial of a test claim based on costs incurred, as a result of reserve transfers in the Public Employees' Retirement System (PERS). The transfers reduced credits, which the city received for interest earned on deposits, resulting in a higher employer contribution rate. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478 (1987)). The Second District Court of Appeal, held that: (1) statute requiring PERS to increase pension payments to retired employees and funding the additional payments from excess amounts held in reserve deficiencies account did not compel city to do anything and any increase in costs, due to city's loss of interest on the excess funds, was only incidental to the statute, so that city was not entitled to reimbursement, and (2) pension payments to retired employees do not constitute a "program" or "service" for purposes of state constitutional

Certificated School Employees: Parental Leave (16-TC-01)

provision requiring reimbursement to cities for costs of programs and services mandated by legislature. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478, 1482 (1987).

DOF reliance on *County of Los Angeles* is misguided as the test claim was based on amended Labor Code provisions related to workers' compensation, a law that affects public and private employers alike. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.) The court concluded, "when the voters adopted Article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies." (*Id.*)

C. Previous Differential Pay Test Claims failed to provide an increased level of service.

The *Differential Pay and Reemployment Test Claim* approved by the Commission on July 31, 2003, involved the amendment to the differential pay statute specifying that the five-month period run *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave. The Commission determined there was no new program or higher level of service, within the meaning of Article XIII B, section 6, for any increased costs for the amount of differential pay compensation, when it is calculated consecutively, rather than concurrently, with accumulated sick leave, and that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child's educational performance, future mental, physical, social, and emotional health in life, impacted by the strength of the relationship with both of the child's parents. The test claim does not involve concurrent and consecutive sick leave that is limited to a change in calculating differential pay.

Conclusion

This test claim requires increased costs on school districts, and the payments constitute a "program" or "service" for purposes of state constitutional provision, requiring reimbursement to school districts for costs of providing maternity and paternity leave to public employees.

The Assembly and Senate floor analysis foresaw the likelihood of this test claim statute being approved as a reimbursable mandate. (Senate Floor Analysis 8-31-15: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB375.)

Artiano Shinoff

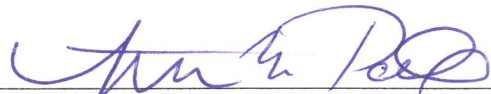
Heather Halsey
Executive Director
Commission on State Mandates

August 4, 2017
Page 7

Certificated School Employees: Parental Leave (16-TC-01)

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.



Arthur M. Palkowitz,
Attorney for the Claimant, Fresno Unified
School District

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

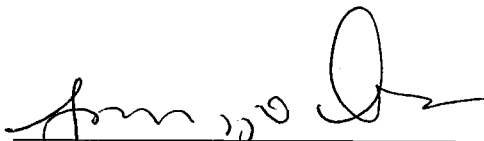
On August 4, 2017, I served the:

- **Claimant Comments on the Draft Proposed Decision filed August 4, 2017**

Certificated School Employees: Parental Leave, 16-TC-01
Education Code Section 44977.5;
Statutes 2015, Chapter 400 (AB 375)
Fresno Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 4, 2017 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/20/17

Claim Number: 16-TC-01

Matter: Certificated School Employees: Parental Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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BILL ANALYSIS

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AB 375

Page 1

Date of Hearing: May 27, 2015

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Jimmy Gomez, Chair

AB
375 (Campos) - As Amended May 4, 2015

| Policy Committee: | Education | Vote: | 6 - 0 |
|----------------------|-----------|-------|-------|
| | | | |
| | | | |

Urgency: No State Mandated Local Program: Yes Reimbursable:
Yes

SUMMARY:

This bill expands the provision of differential pay to certificated school employees for purposes of maternity or paternity leave. Current law provides this benefit for leave

related to illness or accident. Specifically, this bill:

- 1) Specifies an employee shall not be provided more than one five-month period per maternity leave or paternity leave. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.
- 2) Specifies, to the extent that the changes made by this measure conflict with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, the changes made by this measure shall not apply until expiration or renewal of that collective bargaining agreement.

FISCAL EFFECT:

- 1) Unknown Proposition 98/GF state mandated reimbursable costs associated with the expansion of the existing Differential Pay and Reemployment mandate (see comments).
- 2) This bill results in increased employer costs to provide differential pay to employees not currently eligible for this benefit. Employer costs based on the differential pay program should not exceed what is normally paid to a school employee who would otherwise be working; however, this bill may place additional cost pressures on school district budgets to the extent they no longer experience cost savings as a result of not paying employees during a leave of absence due to maternity and paternity leave.

COMMENTS:

1) Purpose. The Moore-Brown-Roberti Family Rights Act (CFRA) is the state-law equivalent of the federal Family and Medical Leave Act (FMLA). Both acts provide for up to 12 weeks of unpaid family and medical leave for public and private employees. During this time, the certificated employee may be able to use accrued sick leave, but once that time is exhausted, the certificated employee is unpaid for the remaining weeks. This bill would extend differential pay through the 12 week leave period under FMLA for both mothers and fathers.

Differential pay is calculated by subtracting the cost of a substitute employee from the certificated employee's salary. As an example, if the certificated employee made \$50,000 and the substitute cost \$35,000, then the certificated employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick time.

The California Teachers Association (CTA) supports the bill and states maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond. CTA notes when more workers are able to take leave, they're more likely to choose to remain in the labor market, and paid parental leave is associated with higher employment in economies around the world.

2) Differential pay mandate. On July 31, 2003, the Commission on State Mandates (CSM) adopted the Statement of Decision for the Differential Pay and Reemployment program. The CSM found that certain administrative activities around the provision of differential pay constituted a new program or higher level of service. Accordingly, the CSM approved a test claim for the following reimbursable activities:

- a) When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.)
- b) When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.)
- c) When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not reimbursement of salary and benefits for the employee once they return to work.)

This bill expands the provision of law that provides for differential pay to also include leave related to injury, maternity and paternity leave. This expansion could result in increased cost claims related to this existing mandate. On average, annual mandated costs were approximately \$27,000 per year. The Differential Pay mandate is currently included in the K-12 Education Block Grant. Under the block grant, a school district, charter school, or county office of education may choose to receive a per-pupil allocation to conduct existing K-12 mandated activities rather than receive full payment under the existing claims process. The Legislature could face pressure

to increase the mandate should this bill result in increased cost claims.

Analysis Prepared by:Misty Feusahrens / APPR. / (916)
319-2081

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 375
Campos - As Amended May 4, 2015

SUBJECT: School employees: sick leave: paternity and maternity leave.

SUMMARY: Requires certificated school employees on maternity or paternity leave to receive differential pay. Specifically, this bill specifies:

- 1) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness, accident, maternity leave or paternity leave for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed; and, specifies an employee shall not be provided more than one five-month period per illness, accident, maternity leave or paternity leave. However, if a school year terminates before the five-month

period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.

- 2) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.
- 3) To the extent that the changes made by this measure conflict with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, the changes made by this measure shall not apply until expiration or renewal of that collective bargaining agreement.

EXISTING LAW:

- 1) Specifies during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

Specifies the following:

- a) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.

 - b) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code (EC) 44977)
- 2) Specifies that Section 44977 shall not apply to any school district which adopts and maintains in effect a rule which provides that when a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he shall receive 50 percent or more of his regular salary during the period of such absence and nothing in Section 44977 shall be construed as preventing the governing board of any district from adopting any such rule. Notwithstanding the foregoing, when a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education. Nothing shall be construed so as to deprive any district,

city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons requiring certification qualifications. This shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district. (EC 44983)

3) Authorizes eligible employees to take up to 12 weeks of unpaid family and medical leave, including leave for the birth or adoption of a child, leave to care for specified family members with a serious health condition, or for the employee's own serious health condition.

FISCAL EFFECT: This bill is keyed nonfiscal; however the Rules Committee has deemed that this bill shall be referred to the Appropriations Committee upon passage of this committee.

COMMENTS: The Moore-Brown-Roberti Family Rights Act (CFRA) is the state-law equivalent of the federal Family and Medical Leave Act (FMLA). Both acts provide for up to 12 weeks of unpaid family and medical leave for public and private employees. This bill requires school employers to pay differential pay for certificated employees who take the 12 week FMLA maternity or paternity leave. Differential pay is calculated by subtracting the cost of a substitute employee from the certificated employee's salary. As an example, if the certificated employee made \$50,000 and the substitute cost \$35,000, then the certificated employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick time.

According to the author, currently, certificated school employees can only take up to six or eight weeks of paid leave when they have a baby. Six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave.

Disability Leave and FMLA: Typically, mothers are on pregnancy disability leave during the first 6-8 weeks, or longer, after a baby's birth. During this time, certificated employees use their sick leave and when their sick leave is exhausted, they receive differential pay for the remaining time. Once the 6-8 week disability leave period is over and the employee's doctor deems the employee able to return to work, then the employee starts the 12 week leave period under FMLA. During this time, the certificated employee may be able to use accrued sick leave, but once that time is exhausted, the certificated employee is unpaid for the remaining weeks. This bill would extend the differential pay through the 12 week leave period under FMLA for both mothers and fathers.

Parental Leave in the United States and Other Countries: A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, 97 percent provide paid maternity leave for women. Only four out of the 167 countries studied did not: Lesotho, Papua New Guinea, Swaziland and the United States. Australia was also listed in this study as not providing paid maternity leave, but their policy recently changed and parents there currently receive 18 weeks of paid leave. While these four countries did provide some form of maternity leave there was no requirement that it be paid leave. U.S. federal law provides for up to three months of unpaid maternity and/or paternity leave. The U.S. is the only industrialized nation that doesn't mandate that parents of newborns get paid leave.

Examples of countries with progressive paid maternity/paternity leave laws include Ireland with 6.5 months of paid leave, Italy with five months of paid leave, England with nearly 10 months of paid leave, and Sweden with nearly 16 months of paid leave.

Arguments in Support: The California Teachers Association supports the bill and states, "Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship impacts a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy.

Overall, paid family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they're more likely to choose to remain in the labor market, and paid parental leave is associated with higher employment in economies around the world. With today's modern and creative family structures, paternity leave after the birth of a child means both caregivers will more involved in a child's direct care nine months later - changing diapers, feeding, bathing - than a parent who doesn't take leave. Also, paternity leave results in more competent and committed parents later in their children's lives, shared responsibilities with long term societal benefits."

Previous Legislation: AB 1562 (Gomez) from 2014, which was held on the Senate Appropriations Suspense file, would have amended existing law governing unpaid family and medical leave with respect to public or private school employees, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees

California Democrats for Education Reform

California Federation of Teachers

California Teachers Association

Luther Burbank Education Association

San Jose Teachers Association

South Bay Labor Council


United Teachers of Santa Clara

Several individuals

Opposition

None on file.

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Procedure 210 Budgetary Accounting

One of the unique features of fund accounting is the use of budgetary accounts, which, typically, are not used in commercial accounting. In fund accounting, the revenue and expenditure accounts are the “actual” accounts and represent the actual activity of the fund as it will be reported in the financial statements. In contrast, the budgetary accounts are projections and show how much is estimated to be spent or received during a given period of time to carry out the local educational agency’s (LEA’s) goals.

Budgetary Accounts and Integration

The budgetary accounts allow for the comparison of actual revenues and expenditures with estimated revenues and expenditures. Upon adoption of the budget, budgetary accounts must be established and integrated within the accounting system to provide management with timely financial information to track the status of budgetary revenues and expenditures.

The budgetary accounts prescribed for school districts and county offices of education include the following:

- Estimated Revenue (9810)
- Estimated Other Financing Sources (9815)
- Appropriations (9820)
- Estimated Other Financing Uses (9825)
- Encumbrances (9830)

Budgetary accounts have two purposes:

1. To record the estimated revenues of a fund by source and amount. The recording of actual revenues allows for a comparison of the actual revenues with the estimated revenues.
2. To record the limits that are set on the expenditure levels by the appropriations. The recording of actual expenditures allows a comparison of the actual expenditures to the amounts that are available to be committed or expended within the limits set by law or by the governing board.

Each budgetary account is supported by a subsidiary ledger and controlled at a level specified by legal requirements to allow comparisons with actual

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results of financial operations. At the end of the fiscal year, budgetary accounts are closed by reversing the entries made at the beginning of the fiscal year.

Comparison of Actual Results with the Legally Adopted Budget

Governmental Accounting Standards Board (GASB) Statement 34, applicable to state and local governments, changed the way budget information is reported in the year-end audited financial statements. Previously, governments reported only the final budget along with the actual results of financial operations. Under GASB Statement 34, the budgetary comparison must include the original budget, the final budget, and the actual results of financial operations for the general and major special revenue funds.

Basis of Budgeting and GAAP Reporting

The LEA's accounting system must make it possible to:

1. Present fairly and with full disclosure the financial position and results of financial operations of the governmental unit in conformity with GAAP.
2. Determine and demonstrate compliance with finance-related legal requirements.

Generally, for California LEAs the basis of budgeting should be the same as the basis of accounting used in the audited financial statements.

Budgetary accounting must conform to the account codes in the standardized account code structure. For simplicity, the illustrations used in this procedure show budgetary accounting entries at only the object level.

Recording Budgeted Revenues

The adopted budget provides the information for recording budgeted revenues in the general ledger budgetary account, Estimated Revenue (9810). Each item of estimated revenue should be accounted for separately so that revenue surpluses or deficiencies are readily monitored.

The following is a sample posting of \$1 million of budgeted revenues at the object level:

Procedure 210 Budgetary Accounting

Estimated Revenue

| | |
|--|-------------|
| 8010–8099 LCFF Sources | |
| 8011 LCFF State Aid—Current Year | \$475,000 |
| 8041 Secured Roll Taxes | 350,000 |
| 8042 Unsecured Roll Taxes | 50,000 |
| | |
| 8100–8299 Federal Revenue | |
| 8110 Maintenance and Operations (PL 81-874)..... | 25,000 |
| 8290 All Other Federal Revenue | 5,000 |
| | |
| 8300–8599 Other State Revenue | |
| 8311 Other State Apportionments—Current Year | 20,000 |
| 8560 State Lottery Revenue..... | 25,000 |
| | |
| 8600–8799 Other Local Revenue | |
| 8799 Other Transfers In from All Others | 50,000 |
| | |
| Total Estimated Revenue..... | \$1,000,000 |

The total of the estimated revenue entered in the subsidiary ledger must agree with the total of the general ledger budgetary account, Estimated Revenue (9810). The same journal entry is posted to both the subsidiary ledger and the general ledger.

Preparing the Journal Entry. The general ledger and subsidiary ledger accounts and the amounts for each are listed in the journal entry as a record of the estimated revenue, as illustrated in the following example:

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J2

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|---------------------------|--------------------|--------------|---------------|
| 7-1-xx | Estimated Revenue | 9810 | \$1,000,000 | |
| | Unassigned/Unappropriated | 9790 | | \$1,000,000 |

Subsidiary Revenue Ledger

| <u>Object Code</u> | <u>Object Title</u> | <u>(Budgeted amounts)</u> |
|--------------------|--|---------------------------|
| 8011 | LCFF State Aid—Current Year | \$ 475,000 |
| 8041 | Secured Roll Taxes | 350,000 |
| 8042 | Unsecured Roll Taxes | 50,000 |
| 8110 | Maintenance and Operations (Public Law 81-874) | 25,000 |
| 8290 | All Other Federal Revenue | 5,000 |
| 8311 | Other State Apportionments—Current Year | 20,000 |
| 8560 | State Lottery Revenue | 25,000 |
| 8799 | Other Transfers In from All Others | <u>50,000</u> |
| | | \$ 1,000,000 |

To record estimated revenue as contained in the adopted budget.

Entry J2 is a general journal entry and also carries the information needed to post to the subsidiary ledger (the subsidiary revenue ledger).

The single postings to the individual revenue ledger accounts represent the breakdown of the total shown in the estimated revenue (general ledger) account.

Posting to the General Ledger. The journal entry for recording the approved budget is posted to the general ledger, as the following examples illustrate. For purposes of this example, assume that a J1 entry for \$92,981.78, representing the prior year balance brought forward, has already been made.

Account 9810

Estimated Revenue

| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
|-------------|--------------|--------------|---------------|----------------|--------------|
| 7-1-xx | J2 | \$1,000,000 | | \$1,000,000 | Dr |

Account 9790

Unassigned/Unappropriated Fund Balance

| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
|-------------|--------------|--------------|-----------------|-----------------|--------------|
| 7-1-xx | J1 | | \$ 92,981.78 | \$ 92,981.78 | Cr |
| 7-1-xx | J2 | | \$ 1,000,000.00 | \$ 1,092,981.78 | Cr |

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Posting the Subsidiary Ledger. The subsidiary revenue ledger is posted from the detailed breakdown shown in the journal entry. Each account is posted to show the amounts carried in the journal entry in the “Estimated revenue” and “Estimated to be received” columns.

| <u>Revenue Ledger</u> | | | | | |
|-----------------------|--------------|---------------------------|-------------------------|-------------------------------|---------------------------------|
| <u>Account 8041</u> | | <u>Secured Roll Taxes</u> | | | |
| <u>Date</u> | <u>Ref #</u> | <u>Estimated revenue</u> | <u>Amounts received</u> | <u>Total received to date</u> | <u>Estimated to be received</u> |
| 7-1-xx | J2 | \$350,000 | | | \$350,000 |

Each revenue subsidiary ledger account is similarly posted.

Recording Budgeted Expenditures

Estimated expenditure values, like estimated revenue values, are taken from the adopted budget, as illustrated in the example that follows:

1000–1999 Certificated Personnel Salaries

| | | |
|------|--|---------------|
| 1100 | Certificated Teachers’ Salaries | \$300,000 |
| 1200 | Certificated Pupil Support Salaries | 50,000 |
| 1300 | Certificated Supervisors’ and Administrators’ Salaries | 150,000 |
| 1900 | Other Certificated Salaries | <u>25,000</u> |
| | Total Certificated Personnel Salaries | \$525,000 |

2000–2999 Classified Personnel Salaries

| | | |
|------|--|---------------|
| 2100 | Classified Instructional Salaries | \$125,000 |
| 2200 | Classified Support Salaries | 15,000 |
| 2300 | Classified Supervisors’ and Administrators’ Salaries | 10,000 |
| 2400 | Clerical, Technical, and Office Staff Salaries | 5,000 |
| 2900 | Other Classified Salaries | <u>20,000</u> |
| | Total Classified Personnel Salaries | \$175,000 |

3000–3999 Employee Benefits

| | | |
|------|---|--------------|
| 3101 | State Teachers’ Retirement System, certificated positions | \$25,000 |
| 3201 | Public Employees’ Retirement System, certificated positions | 15,000 |
| 3301 | OASDI/Medicare/Alternative, certificated positions | 10,000 |
| 3401 | Health & Welfare Benefits, certificated positions | 30,000 |
| 3501 | State Unemployment Insurance, certificated positions | 5,000 |
| 3601 | Workers’ Compensation Insurance, certificated positions | 10,000 |
| 3901 | Other Benefits, certificated positions | <u>5,000</u> |
| | Total Employee Benefits | \$100,000 |

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4000–4999 Books and Supplies

| | | |
|------|---|--------------|
| 4100 | Approved Textbooks and Core Curricula Materials | \$5,000 |
| 4200 | Books and Other Reference Materials | 3,500 |
| 4300 | Materials and Supplies | 500 |
| 4400 | Noncapitalized Equipment | <u>1,000</u> |
| | Total Books and Supplies | \$10,000 |

5000–5999 Services and Other Operating Expenditures

| | | |
|------|---|--------------|
| 5200 | Travel and Conferences | 300 |
| 5300 | Dues and Memberships | 200 |
| 5400 | Insurance | 10,000 |
| 5500 | Operations and Housekeeping Services | 5,000 |
| 5600 | Rentals, Leases, Repairs, and Noncapitalized Improvements | 4,500 |
| 5800 | Professional/Consulting Services and Operating Expenditures | <u>5,000</u> |
| | Total Services and Other Operating Expenditures | \$25,000 |

6000–6999 Capital Outlay

| | | |
|------|---|---------------|
| 6100 | Land | \$25,000 |
| 6200 | Buildings and Improvements of Buildings | 22,500 |
| 6300 | Books & Media for New/Major Expansion of School Libraries | 1,500 |
| 6400 | Equipment | <u>26,000</u> |
| | Total Capital Outlay | \$75,000 |

7000–7499 Other Outgo

| | | |
|------|--|-----------------|
| 7141 | Other Tuition, Excess Costs, and/or Deficit Payments to School Districts | <u>\$40,000</u> |
| | Total Other Outgo | \$40,000 |

Total Budgeted Expenditures \$950,000

Each budgeted expenditure item should be accounted for separately so that expenditures can be controlled within the various budget classifications. This separate accounting may be accomplished by use of a subsidiary ledger usually known as the appropriation ledger. While separate accounts should be maintained for each of the required expenditure classifications, additional subdivisions of these classes may be maintained as separate accounts if needed.

The approved expenditure budget is subject to later adjustment as expenditure estimates change.

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Preparing the Journal Entry. Total budgeted expenditures of \$950,000 represent the total appropriation allotted for programs. In the standardized account code structure (SACS), the goal and function codes provide a classification of expenditure usage, and the object provides a classification of expenditure type. The journal entry is shown in the following example:

J

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--|--------------------|--------------|---------------|
| 7-1-xx | Unassigned/Unappropriated Appropriations | 9790 9820 | \$950,000 | \$950,000 |

Subsidiary Appropriation Ledger

| <u>Object Code</u> | <u>Object Title</u> | |
|--------------------|---|---------------|
| 1100 | Certificated Teachers' Salaries | \$300,000 |
| 1200 | Certificated Pupil Support Salaries | 50,000 |
| 1300 | Certificated Supervisors' and Administrators' Salaries | 150,000 |
| 1900 | Other Certificated Salaries | 25,000 |
| 2100 | Classified Instructional Salaries | 125,000 |
| 2200 | Classified Support Salaries | 15,000 |
| 2300 | Classified Supervisors' and Administrators' Salaries | 10,000 |
| 2400 | Clerical, Technical, and Office Staff Salaries | 5,000 |
| 2900 | Other Classified Salaries | 20,000 |
| 3101 | State Teachers' Retirement System, certificated positions | 25,000 |
| 3201 | Public Employees' Retirement System, certificated positions | 15,000 |
| 3301 | OASDI/Medicare/Alternative, certificated positions | 10,000 |
| 3401 | Health & Welfare Benefits, certificated positions | 30,000 |
| 3501 | State Unemployment Insurance, certificated positions | 5,000 |
| 3601 | Workers' Compensation Insurance, certificated positions | 10,000 |
| 3901 | Other Benefits, certificated positions | 5,000 |
| 4100 | Approved Textbooks and Core Curricular Materials | 5,000 |
| 4200 | Books and Reference Materials | 3,500 |
| 4300 | Materials and Supplies | 500 |
| 4400 | Noncapitalized Equipment | 1,000 |
| 5200 | Travel and Conferences | 300 |
| 5300 | Dues and Memberships | 200 |
| 5400 | Insurance | 10,000 |
| 5500 | Operations and Housekeeping Services | 5,000 |
| 5600 | Rentals, Leases, Repairs, and Noncapitalized Improvements | 4,500 |
| 5800 | Professional/Consulting Services and Operating Expenditures | 5,000 |
| 6100 | Land | 25,000 |
| 6200 | Buildings and Improvements of Buildings | 22,500 |
| 6300 | Books and Media for New School Libraries or Major Expansion of School Libraries | 1,500 |
| 6400 | Equipment | 26,000 |
| 7141 | Other Tuition, Excess Costs, and/or Deficit Payments to School Districts | <u>40,000</u> |
| | | \$950,000 |

To record estimated expenditures as contained in the adopted budget.

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The journal entry for appropriations is similar to the one that records estimated revenue except that the total appropriations are debited to the fund balance account (9790) instead of being credited. The total appropriations for all accounts in the subsidiary appropriation ledger must agree with the balance in the general ledger control account, Appropriations (9820).

Posting to the General Ledger. The journal entry recording the approved appropriations is posted to the general ledger in the same manner as the entry recording estimated revenue, as illustrated in these examples:

| <u>Account 9790</u> | | <u>Unassigned/Unappropriated Fund Balance</u> | | | |
|---------------------|--------------|---|----------------|----------------|--------------|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
| 7-1-xx | J1 | | \$ 92,981.78 | \$ 92,981.78 | Cr |
| | J2 | | \$1,000,000.00 | \$1,092,981.78 | Cr |
| | J3 | \$950,000 | | \$ 142,981.78 | Cr |

| <u>Account 9820</u> | | <u>Appropriations</u> | | | |
|---------------------|--------------|-----------------------|---------------|----------------|--------------|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
| 7-1-xx | J3 | | \$950,000 | \$950,000 | Cr |

Note that the debit to the fund balance account has been subtracted from the previous credit balance to produce a new credit balance of \$142,981.78. The remaining Unassigned/Unappropriated Fund Balance represents the prior year balance of \$92,981.78 plus the \$50,000 operating surplus from the current budget.

Posting to the Subsidiary Ledger. The journal entry is posted to the subsidiary appropriation ledger in a manner similar to that used for posting estimated revenue, as shown in this example:

| <u>Appropriation Ledger</u> | | | | | | | |
|-----------------------------|--------------|--|---------------------|---------------------------|-----------------|-------------------------|-----------------------------|
| <u>Account 1100</u> | | <u>Certificated Teachers' Salaries</u> | | | | | |
| <u>Date</u> | <u>Ref #</u> | <u>Appropriation</u> | <u>Encumbrances</u> | <u>Encumbered to Date</u> | <u>Expended</u> | <u>Expended to Date</u> | <u>Unencumbered Balance</u> |
| 7-1-xx | J3 | \$300,000 | | | | | \$300,000 |

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The subsidiary appropriation ledger has additional columns for entering encumbrances in addition to expenditures. The amount appropriated for this account has been entered in the “Appropriation” column and again in the “Unencumbered Balance” column. As amounts are later entered in the “Encumbrances” column or “Expended” column, the “Unencumbered Balance” column will be adjusted accordingly.

Recording Budgeted Components of Fund Balance

In governmental funds, the difference between assets and deferred outflows and liabilities and deferred inflows is reported as fund balance. Fund balance is divided into five classifications: nonspendable, restricted, committed, assigned, and unassigned. The separation of fund balance into these components is important to LEAs because it provides information on the funds available to cover unanticipated expenditures.

Nonspendable fund balance (objects 9710–9719) is the portion that is not available for expenditure because it is not in spendable form or is legally or contractually required to remain intact. For example, Stores, Prepaid Expenditures, and Revolving Cash are not available for spending, so the portion of fund balance represented by these items must be classified as nonspendable.

Restricted fund balance (objects 9730–9749) is the portion that is subject to externally imposed or legally enforceable constraints by external resource providers or through constitutional provisions or enabling legislation.

Committed fund balance (objects 9750–9769) is the portion in which the use is constrained by limitations imposed by the LEA through formal action of its highest level of decision-making authority. It would include amounts set aside pursuant to an economic stabilization arrangement only if the arrangement were more formal than the reserve for economic uncertainties recommended by the Criteria and Standards for Fiscal Solvency.

Assigned fund balance (objects 9770–9788) is the portion intended to be used for specific purposes but for which the constraints do not meet the criteria to be reported as restricted or committed.

Unassigned fund balance (9789–9790) is the portion not classified as nonspendable, restricted, committed, or assigned in the general fund. It includes the amount identified by the governing board as reserved for

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economic uncertainties, pursuant to the Criteria and Standards for Fiscal Solvency, which is recorded using Object 9789.

Refer to Procedure 330 for more detailed definitions of the ending fund balance object codes.

Assuming that the budget shows \$50,000 Reserve for Economic Uncertainties and \$9,400 for Stores, the following journal entry will be prepared:

J4

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|------------------------------------|--------------------|--------------|---------------|
| 7-1-xx | Unassigned/Unappropriated | 9790 | \$ 59,400.00 | |
| | Nonspendable Stores | 9712 | | \$ 9,400.00 |
| | Reserve for Economic Uncertainties | 9789 | | \$50,000.00 |

To record Nonspendable Stores and Reserve for Economic Uncertainties, as contained in the adopted budget.

The journal entry is then posted to the general ledger.

| <u>Account 9790</u> | | <u>Unassigned/Unappropriated Fund Balance</u> | | | |
|---------------------|--------------|---|----------------|----------------|--------------|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
| 7-1-xx | J1 | | \$ 92,981.78 | \$ 92,981.78 | Cr |
| 7-1-xx | J2 | | \$1,000,000.00 | \$1,092,981.78 | Cr |
| 7-1-xx | J3 | \$950,000.00 | | \$ 142,981.78 | Cr |
| 7-1-xx | J4 | \$ 59,400.00 | | \$ 83,581.78 | Cr |

| <u>Account 9712</u> | | <u>Nonspendable Stores</u> | | | |
|---------------------|--------------|----------------------------|---------------|----------------|--------------|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
| 7-1-xx | J4 | | \$9,400.00 | \$9,400.00 | Cr |

| <u>Account 9789</u> | | <u>Reserve for Economic Uncertainties</u> | | | |
|---------------------|--------------|---|---------------|----------------|--------------|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> |
| 7-1-xx | J4 | | \$50,000.00 | \$50,000.00 | Cr |

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Checking the Trial Balance

At this point, the general ledger has been opened and the adopted budget recorded. The next step is to complete a trial balance to ensure that the journal entries made in integrating the budget with the general ledger are in balance. The trial balance lists the general ledger accounts and their balances. The total debits and the total credits must be equal, indicating a balanced general ledger. Taking into account the journal entries made so far, plus a few not specifically shown, the trial balance at this point should look like this:

| <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|--|--------------------|--------------|---------------|
| Cash in County Treasury | 9110 | \$100,000 | |
| Accounts Payable (Current Liabilities) | 9500 | | \$ 7,018 |
| Nonspendable Stores | 9712 | | 9,400 |
| Reserve for Economic Uncertainties | 9789 | | 50,000 |
| Unassigned/Unappropriated | 9790 | | 83,582 |
| Estimated Revenue | 9810 | 1,000,000 | |
| Appropriations | 9820 | | 950,000 |
| | Totals | \$1,100,000 | \$1,100,000 |

Recording Encumbrances

An *encumbrance* is a commitment in the form of a purchase order or offer to buy goods or services. The encumbrance account is a budgetary account that is used to prevent overspending of an appropriation.

Encumbrances for Purchases

A purchase generally involves the following steps:

1. Initiation of a purchase requisition. The purchase requisition is the internal document authorizing the issuance of a purchase order for the desired goods or services. The purchase requisition is generally approved by a budget manager or administrator responsible for budgets and becomes the basis for the generation of a purchase order, a legal contract with the vendor for goods or services. Generally, no accounting transaction is recorded for purchase requisitions in the general or subsidiary ledgers unless a pre-encumbrance system is used.

Procedure 210 Budgetary Accounting

2. Issuance of a purchase order. If funds are available and the requisition is for an appropriate expenditure, the LEA issues a purchase order to the selected vendor. Upon issuance of a purchase order, an accounting transaction is recorded, debiting the Encumbrances account (9830) and crediting the Reserve for Encumbrances account (9720) for the amount authorized in the purchase order.
3. Receipt of the goods or services. An invoice may accompany the product or may be sent separately. Generally, no accounting transaction is recorded at this point.
4. Payment of the invoice. An accounting transaction is recorded whereby the original encumbrance entry is reversed, the expenditure account is debited, and the cash account is credited.

A sample purchase order is shown as follows:

| <u>Purchase Order No. 2</u> | | | | |
|------------------------------------|---|-------------------|-------------------|---------------|
| To: Student Supply Company | Date: July 1, xxxx | | | |
| From: _____ | Ordered by School _____ | | | |
| Deliver to: 100 Main Street | School District Appropriation Ledger Account 4300 | | | |
| <u>Quantity</u> | <u>Unit</u> | <u>Item</u> | <u>Unit price</u> | <u>Amount</u> |
| 1,000 | Ream | Newsprint | \$ 0.60 | \$ 600.00 |
| 100 | Gross | #2 school pencils | 3.00 | 300.00 |
| 300 | Box | Crayons | 0.30 | 90.00 |
| | | | | \$ 990.00 |

Most financial software programs will automatically enter an encumbrance in the appropriation ledger and the general ledger upon the creation of a purchase order. A report on outstanding encumbrances would look like the following:

| <u>Purchase Order Encumbrance Summary</u> | | <u>For July xxxx</u> | | |
|---|------------------------------|----------------------|-----------------------|--------------------|
| <u>Vendor's name</u> | <u>Appropriation account</u> | <u>Date</u> | <u>Purchase order</u> | <u>Amount of</u> |
| | <u>number</u> | | <u>number</u> | <u>encumbrance</u> |
| J. Computer Company | 4400 | 7-1-xx | 1 | \$ 810.00 |
| Student Supply Company | 4300 | 7-1-xx | 2 | 990.00 |
| Total | | | | \$ 1,800.00 |

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The following journal entry records the encumbrance information:

JJ

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--------------------------|--------------------|--------------|---------------|
| 7-1-xx | Encumbrances | 9830 | \$1,800.00 | |
| | Reserve for Encumbrances | 9720 | | \$1,800.00 |

Subsidiary Appropriation Ledger

| <u>Object Code</u> | <u>Object Title</u> | |
|--------------------|--------------------------|---------------|
| 4300 | Materials and Supplies | \$ 990.00 |
| 4400 | Noncapitalized Equipment | <u>810.00</u> |
| | | \$1,800.00 |

To record purchase order encumbrances for July, xxxx.

The posting of the Materials and Supplies (Object 4300) item to the account in the subsidiary appropriation ledger is illustrated as follows:

Appropriation Ledger

Account 4300 *Materials and Supplies*

| <u>Date</u> | <u>Ref #</u> | <u>Appropriation</u> | <u>Encumbrances</u> | <u>Encumbered to Date</u> | <u>Expended</u> | <u>Expended to Date</u> | <u>Unencumbered Balance</u> |
|-------------|--------------|----------------------|---------------------|---------------------------|-----------------|-------------------------|-----------------------------|
| 7-1-xx | J7 | \$2,500.00 | \$990.00 | \$990.00 | | | \$1,510.00 |

Encumbrance Adjustments—Purchases

An encumbrance must be adjusted or cancelled when payments to vendors or other expenditures are recorded. If a purchase order was originally encumbered for \$100 but the actual payment was \$99.50, the original \$100 encumbrance is cancelled. Partial payments on an order are liquidated in the same amount as originally encumbered for items being paid, and the balance of the encumbrance is cancelled when the final payment is made. Depending on the encumbrance method being used, the adjustments or liquidations are posted either directly from the purchase order or from a Purchase Order Liquidation Summary listing the purchase orders being paid.

Procedure 210 Budgetary Accounting

With some systems it is more practical to cancel all encumbrances related to a purchase order and to re-encumber only that part of the order that is outstanding after the paid items have been deleted. If an encumbrance amount is cancelled or changed because items ordered are unavailable or prices are changed, the adjustment is recorded in the same manner as that for routine adjustments or cancellations following payments.

Preparing the Journal Entry. The journal entry to record encumbrance adjustments shows the general ledger and subsidiary ledger accounts and the amounts for each, as shown in the following example:

J25

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--------------------------|--------------------|--------------|---------------|
| 8-31-xx | Reserve for Encumbrances | 9720 | \$5,435 | |
| | Encumbrances | 9830 | | \$5,435 |

Subsidiary Appropriation Ledger

| <u>Object Code</u> | <u>Object Title</u> | |
|--------------------|---|--------------------|
| 4100 | Approved Textbooks and Core Curricula Materials | \$ 350.00 |
| 4300 | Materials and Supplies | 475.00 |
| 4400 | Noncapitalized Equipment | 810.00 |
| 5500 | Operations and Housekeeping Services | 1,300.00 |
| 6200 | Buildings and Improvements of Buildings | <u>2,500.00</u> |
| | | <u>\$ 5,435.00</u> |

To record encumbrance cancellations (other than salaries) for the month of August.

Procedure 210 Budgetary Accounting

**California School District
Warrant Register Number 1**

Date: August 31, xxxx

| Warrant Number | Vendor | Expenditure Classification | Amount |
|----------------|-------------------------------------|----------------------------|-------------------|
| 1. | Aldrich & Aldrich..... | 4300 | \$ 48.06 |
| 2. | American Book Company..... | 4100 | 350.00 |
| 3. | Best Music Company | 4300 | 210.00 |
| 4. | E.P. Finigan Company | 6200 | 2,500.00 |
| 5. | Pacific Gas & Electric Company..... | 5500 | 700.00 |
| 6. | Pacific Bell | 5500 | 600.00 |
| 7. | Taylor's School Supplies..... | 4300 | 216.94 |
| 8. | J. Computer Company | 4400 | <u>810.00</u> |
| Total..... | | | <u>\$5,435.00</u> |

Expenditure Classification Summary

| | | |
|------|---|-------------------|
| 4100 | Approved Textbooks and Core Curricula Materials | \$ 350.00 |
| 4300 | Materials and Supplies | 475.00 |
| 4400 | Noncapitalized Equipment..... | 810.00 |
| 5500 | Operations and Housekeeping Services | 1,300.00 |
| 6200 | Buildings and Improvements of Buildings..... | <u>2,500.00</u> |
| | | <u>\$5,435.00</u> |

This journal entry for encumbrance cancellations is posted to the general ledger in the usual manner.

Posting to the Appropriation Ledger. Entries in the subsidiary appropriation ledger are made in the "Encumbrances" column, as shown in the following examples:

Appropriation Ledger

Account 4400

Noncapitalized Equipment

| Date | Ref # | Appropriation | Encumbrances | Encumbered to Date | Expended | Expended to Date | Unencumbered Balance |
|---------|-------|---------------|--------------|--------------------|----------|------------------|----------------------|
| 7-01-xx | J3 | \$1,000.00 | | | | | \$1,000.00 |
| 7-01-xx | J7 | 1,000.00 | \$810.00 | \$810.00 | | | 190.00 |
| 8-31-xx | J25 | 1,000.00 | (810.00) | 0.00 | | | 190.00 |

Encumbrances for Salaries and Benefits

Unlike purchases, for which an encumbrance is recorded at the time the purchase order is issued, the annual cost of salaries and benefits can be

Procedure 210 Budgetary Accounting

encumbered at the beginning of the fiscal year. Salaries and benefits are disencumbered when paid, and amounts encumbered should be adjusted for personnel and rate changes.

The salary encumbrance summary may differ in detail depending on the types of accounting software used. Basic requirements call for a complete accounting for all personnel having salaries to be encumbered, a grouping of these salaries to provide monthly and annual totals by budget classifications, and provisions for recording changes in personnel and salaries.

The journal entries to record the salary encumbrance transactions are listed as follows:

J12

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--------------------------|--------------------|--------------|---------------|
| 7-1-xx | Encumbrances | 9830 | \$350,000 | |
| | Reserve for Encumbrances | 9720 | | \$350,000 |

Subsidiary Appropriation Ledger

| <u>Object Code</u> | <u>Object Title</u> | |
|--------------------|-------------------------------------|---------------|
| 1100 | Certificated Teachers' Salaries | \$300,000 |
| 1200 | Certificated Pupil Support Salaries | <u>50,000</u> |
| | | \$350,000 |

To encumber the annual salaries for certificated staff employed as of the beginning of the fiscal year.

J13

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--------------------------|--------------------|--------------|---------------|
| 7-15-xx | Reserve for Encumbrances | 9720 | \$48,000 | |
| | Encumbrances | 9830 | | \$48,000 |

Subsidiary Appropriation Ledger

| <u>Object Code</u> | <u>Object Title</u> | |
|--------------------|---------------------------------|----------|
| 1100 | Certificated Teachers' Salaries | \$48,000 |

To reverse the encumbrance for the annual salary for Betty Bennett, who resigned on July 15.

J14

| <u>Date</u> | <u>Object Title</u> | <u>Object Code</u> | <u>Debit</u> | <u>Credit</u> |
|-------------|--------------------------|--------------------|--------------|---------------|
| 7-20-xx | Encumbrances | 9830 | \$36,000 | |
| | Reserve for Encumbrances | 9720 | | \$36,000 |

Procedure 210 Budgetary Accounting

| <u>Subsidiary Appropriation Ledger</u> | | |
|--|---------------------------------|----------|
| <u>Object Code</u> | <u>Object Title</u> | |
| 1100 | Certificated Teachers' Salaries | \$36,000 |
| To encumber the annual salary for Ted Thompson, a new employee hired on July 20. | | |

The posting of the preceding entries to the general ledger is as follows:

| <u>Account 9830</u> | | <u>Encumbrances</u> | | | | |
|---------------------|--------------|---------------------|---------------|----------------|--------------|--|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> | |
| 7-01-xx | J7 | \$ 1,800 | | \$ 1,800 | Dr | |
| 7-01-xx | J12 | 350,000 | | 351,800 | Dr | |
| 7-15-xx | J13 | | \$48,000 | 303,800 | Dr | |
| 7-20-xx | J14 | 36,000 | | 339,800 | Dr | |

| <u>Account 9720</u> | | <u>Reserve for Encumbrances</u> | | | | |
|---------------------|--------------|---------------------------------|---------------|----------------|--------------|--|
| <u>Date</u> | <u>Ref #</u> | <u>Debit</u> | <u>Credit</u> | <u>Balance</u> | <u>Dr/Cr</u> | |
| 7-01-xx | J7 | | \$ 1,800 | \$ 1,800 | Cr | |
| 7-01-xx | J12 | | 350,000 | 351,800 | Cr | |
| 7-15-xx | J13 | 48,000 | | 303,800 | Cr | |
| 7-20-xx | J14 | | 36,000 | 339,800 | Cr | |

The posting of the Certificated Teachers' Salaries account to the subsidiary appropriation ledger is illustrated as follows:

| <u>Appropriation Ledger</u> | | | | | | | |
|-----------------------------|--------------|--|---------------------|---------------------------|-----------------|-------------------------|-----------------------------|
| <u>Account 1100</u> | | <u>Certificated Teachers' Salaries</u> | | | | | |
| <u>Date</u> | <u>Ref #</u> | <u>Appropriation</u> | <u>Encumbrances</u> | <u>Encumbered to Date</u> | <u>Expended</u> | <u>Expended to Date</u> | <u>Unencumbered Balance</u> |
| 7-01-xx | J12 | \$300,000 | \$300,000 | \$300,000 | | | \$0.00 |
| 7-15-xx | J13 | 300,000 | -48,000 | 252,000 | | | 48,000 |
| 7-20-xx | J14 | 300,000 | 36,000 | 288,000 | | | 12,000 |

In the preceding illustration, it has been assumed that the changes in personnel were made prior to payment of any payroll in that year. It is important, however, that encumbrances be reduced by the unpaid installments of the annual salaries of personnel leaving the payroll and increased for the unpaid installments of personnel being added to the payroll.



GO

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Pregnancy and Parental Leave Rights

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As a California public school employee, your rights to pregnancy and parental leave are governed by California state and federal law as well as by your collective bargaining agreement. The following describes the basic rights provided under state and federal law. You should consult your chapter about additional rights that may be provided to you by your collective bargaining agreement and confirm with your school district what paperwork you need to file when, and with whom, to qualify for the different leaves described below. For more information on these leave rights and on your rights as a California public school employee, visit the [Legal Services section of MyCTA](#) or contact your local CTA staff person.

Pregnancy-Related Disability Leave

Unpaid leave for the duration of any pregnancy-related disability – either before or after you have your baby. You will likely qualify for pregnancy disability leave, meaning unpaid leave from work for the duration of any physical disability you experience as a result of pregnancy and/or childbirth. Your need for pregnancy disability leave must be verified by your physician and may not exceed four months' time. You can take pregnancy disability leave intermittently as needed. For example, you could take leave during the first trimester for severe morning sickness, in the last trimester for bed rest and following birth for recovery, so long as your physician verifies your need for each period of leave.

To receive pay during the period of your pregnancy-related disability leave, you can use any sick leave that you have accumulated:

- If you work full time for a school district as a certificated employee, you accrue 10 days of paid sick leave a year (Educ. Code 44978).
- If you work part-time, you accrue sick leave proportionate to the number of days per week that you work (Educ. Code 44978).

Unused sick leave accumulates from year to year with no cap and can be transferred (provided you have worked for a district for at least a year), if you subsequently accept a certified position with another school district or community college district (Educ. Code 44979).

Once you have exhausted your sick leave, if you still qualify for pregnancy disability leave, you can obtain extended sick leave, which is often referred to as differential leave pay, for the remainder of your pregnancy disability leave. Differential leave pay is the amount remaining of your salary after the district pays a substitute to fill your position, unless your district has opted to adopt the differential leave pay rate of 50% or more of your salary (Educ. Code 44983). Differential leave pay is available for up to five months for each illness (Educ. Code. 44977). You must exhaust your sick leave in order to qualify for differential leave pay.

Paid pregnancy disability leave if you participate in the State Disability Insurance Program. Although most districts do not participate in the State Disability Insurance ("SDI") program, if your district does and you have opted to make SDI contributions, you can receive paid pregnancy disability benefits of roughly half of your current salary through the SDI program. For a pregnancy without complications, the benefit period is generally from 4 weeks before your due date to 6 weeks after your delivery. If your pregnancy prevents you from working before or after that period, you may receive benefits for a longer period of time if your doctor verifies your need for additional leave.

Parental Leave

Tool & Resources


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FAQs

Do you have questions about investing, retirement planning or other financial issues? Check out our [Frequently Asked Questions](#).

Glossary

A B C D E F G H I J K L M N

O P Q R S T U V W X Y Z

Up to 12 weeks of unpaid parental leave. So long as your school district employs more than 50 employees, and you have worked for the district full time for a full year, you have the right under the California Family Rights Act (“CFRA”) and the federal Family & Medical Leave Act (“FMLA”) to up to 12 weeks of unpaid leave to care for a new or adopted baby or foster child. The leave must be taken within a year of the baby’s birth or the child’s placement in your home. You must also provide your employer with 30 days advance notice of your need for parental leave when your need for the leave is foreseeable.

During the period of your parental leave, your employer must maintain your health insurance coverage and must continue to allow you to accrue seniority and receive the other benefits you would ordinarily receive on other types of leave, such as life, short-term or long term disability or accident insurance coverage, and pension and retirement credit. Your right to unpaid leave under the CFRA and FMLA run concurrently, meaning you are only entitled to one 12-week unpaid leave, not to a 24-week leave. As long as you return to work at the conclusion of 12 weeks, the district must assign you to the same or an equivalent position. If you remain on leave longer than 12 weeks, you can continue to maintain your health insurance by paying the premiums yourself under COBRA, but the district is not obligated to hold your job for you until you choose to return.

If you were on pregnancy disability leave, you may take your 12 weeks of unpaid parental leave after your physician clears you to return to work. If you were not on pregnancy disability leave, you may take your 12 weeks of unpaid parental leave upon the birth or placement of your child or at any time during the subsequent year. The parental leave does not have to be taken in one block of time. Employees have the right to take their bonding parental leave in two-week blocks of time and, on two occasions, employees may take their parental leave in smaller blocks of time less than two weeks’ duration. You can receive pay during the period of your unpaid leave by using any vacation that you have accumulated. Accumulated sick leave can only be used if both you and your employer agree to do so.

Paid parental leave if you participate in the State Disability Insurance Program. Although most districts do not participate in the State Disability Insurance (“SDI”) program, if your district does and you have opted to make SDI contributions, you are eligible under the SDI Paid Family Leave program to receive 6 weeks of partial pay (approximately 55% of your regular pay) for time off to bond with a new child within 12 months of birth, adoption or placement.

Other Pregnancy Related Protections You Should Know About

Both federal and state laws prohibit your district from discriminating against you based on your pregnancy. In addition, state law requires a school district that has a policy, practice or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability, to honor a request to transfer to such a position by a pregnant employee. Districts must also honor such a temporary transfer request if supported by your physician, so long as the district can reasonably accommodate your transfer request.

Upon your return to work, the district must provide you with a reasonable amount of break time for breast pumping purposes unless doing so would seriously disrupt the district’s operations. The district must also make a reasonable effort to provide you with a room or other location (not a toilet stall) near or in your work area, in which you can express milk in private.

Your collective bargaining agreement may provide you with additional leave rights and other pregnancy-related protections. Check with your CTA chapter to find out what benefits your collective bargaining agreement provides.

Related Links

[Disability Insurance: Are You Covered?](#)

[Long Term Care Insurance](#)

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44977 and 44978.1;
Statutes 1998, Chapter 30,

Filed on August 23 1999,

by Palmdale School District, Claimant.

No. 99-TC-02

Differential Pay and Reemployment

PROPOSED 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 July 31, 2003)

STATEMENT OF DECISION

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

This Decision shall become effective on August 14, 2003.

PAULA HIGASHI, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44977 and 44978.1;
Statutes 1998, Chapter 30,
Filed on August 23 1999,
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CODE OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5, ARTICLE 7
(Adopted on July 31, 2003)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 29, 2003. Dr. Carol Berg appeared for claimant Palmdale School District. Ms. Barbara Taylor and Ms. Susan Geanacou appeared on behalf of the Department of Finance.

At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

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 approved the staff analysis for the test claim presented by a 5-0 vote.

BACKGROUND

Claimant, Palmdale School District, submitted a test claim alleging a reimbursable state mandate for school districts for differential pay and reemployment for certificated employees (teachers) on extended sick leave. Prior to the amendment by Statutes 1998, chapter 30, Education Code section 44977 required school districts to pay "differential pay" for up to five months to public school teachers who were absent due to illness or injury. Differential pay is calculated as the difference between the teacher's salary and the cost of a substitute. For example, if a teacher earns \$200 per day, and a substitute is paid \$75, the differential pay to the absent teacher is \$125.

Other Education Code provisions require school districts to provide a minimum of 10 days of annual sick leave to all certificated employees. Any unused sick leave may be accumulated for future use. The amendment to the differential pay statute specifies that the five-month period runs *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave.

The test claim also alleges Education Code section 44978.1, added by Statutes 1998, chapter 30, which provides that when a certificated employee remains unable to return to his or her original

duties due to illness or injury after all sick leave and differential pay is exhausted, the teacher shall, if not placed in another position, be placed on a reemployment list.

Claimant's Position

Claimant alleges a reimbursable state-mandated program for the amendment of Education Code section 44977 and the enactment of Education Code section 44978.1 by Statutes 1998, chapter 30. Specifically, claimant alleges that the test claim legislation requires school districts to engage in the following new activities:

- Review eligibility for, process, calculate and pay sick leave differential pay in a manner different than the manner required under prior law;
- Develop and maintain reemployment lists and track reemployment dates for certain certificated employees;
- Identify positions for which an employee eligible for reemployment is qualified and credentialed to perform;
- Reemploy the employee in such a position; and
- Develop or update policies, procedures, and forms to carry out and train personnel on the requirements of Statutes 1998, chapter 30.

Claimant concludes that none of the Government Code section 17556 exceptions to finding costs mandated by the state apply to the test claim legislation. The claimant specifically asserts that there are no other federal or state constitutional provisions, statutes or executive orders impacted.

State Agency Position

Department of Finance's (DOF's) October 19, 2001 response to the test claim allegations notes that "school districts have been required to provide qualifying certificated employees with differential pay since the enactment of" Statutes 1971, chapter 1102, or prior to January 1, 1975, therefore state reimbursement of the costs for processing differential pay is not required. DOF's other comments regarding the claimant's identified reimbursable activities are summarized below:

- School districts are not eligible for reimbursement of the costs of reviewing new legislation, as this was a required activity prior to January 1, 1975;
- To the extent school districts are required to *modify* existing policies, procedures, computer programs and forms regarding sick leave and differential pay to conform to amendments of Statutes 1998, chapter 30, reimbursement is warranted;
- School districts are eligible for the reimbursement of costs for the development, preparation and adoption of policies, procedures, computer programs and forms to track the reemployment of certificated employees who are placed on a re-employment list;
- Determination of whether an employee is medically able to return to work is made by the employee's physician; there are no school district costs for this alleged activity; and

- Although reimbursement for the administrative costs associated with reemployment is allowable, DOF does not believe districts are entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed.

On May 23, 2003, the Commission received comments from DOF stating general agreement with the findings in the staff analysis, but asking for greater specificity in the identified reimbursable activities. At the May 29, 2003 hearing, Commissioners acknowledged DOF's comments and directed staff to review them when developing parameters and guidelines.

COMMISSION FINDINGS

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.¹ 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. 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 policy, but does not apply generally to all residents and entities in the state.² To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.³

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?⁴

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service

¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

³ Government Code section 17514; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁴ Article XIII B, section 6 of the California Constitution provides: “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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁵ The court has held that only one of these findings is necessary.⁶

Here, the Commission finds that the test claim legislation satisfies the second test that triggers article XIII B, section 6, to the extent that the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that administrative activities for differential pay and reemployment for public school teachers on extended sick leave constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution.⁷

Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon school districts within the meaning of article XIII B, section 6 of the California Constitution?

The claimant contends that the test claim legislation imposes a new program or higher level of service upon school districts by requiring specific new activities and costs for differential pay and reemployment for public school teachers on extended sick leave. The analysis for finding a new program or higher level of service must examine whether the test claim legislation requires a school district to engage in the claimed activities, and whether such activities constitute a new program or higher level of service when compared to prior law.

Education Code sections 44977 and 44978.1, as added by Statutes 1998, chapter 30, are analyzed below for whether they impose mandatory new activities upon school districts.

Test Claim Statutes:

Education Code section 44977. This Education Code section, as amended by Statutes 1998, chapter 30⁸ provides:

- (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave and continues to be absent on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute to fill the position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

⁵ *County of Los Angeles*, supra, 43 Cal.3d at 56.

⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁷ The Commission need not address the issue of whether the claimed activities provide a service to the public.

⁸ Effective and operative January 1, 1999.

(b) For purposes of subdivision (a):

(1) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.

(2) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.

(c) The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

(d) Except in a district where the governing board has already adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due to the absent employee.

(e) When a person employed in a position requiring certification qualifications is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. The rules and regulations shall not conflict with rules and regulations of the State Board of Education.

(f) Nothing in this section shall be construed so as to deprive any district, city, or county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons acquiring certification qualifications.

(g) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

The 1959 Education Code section 13467, as amended by Statutes 1971, chapter 1102, provided:

When a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill his position during his absence or, if no substitute employee was employed, the amount which would have been paid to the substitute had he been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

Excepting in a district the governing board of which has adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due the employee absent from his duties.

When a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education.

Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons acquiring certification qualifications.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

The statute was renumbered by Statutes 1976, chapter 1010 as Education Code section 44977, which continued in effect without substantive amendment until Statutes 1998, chapter 30.⁹ The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate.¹⁰ Thus, only substantive changes to Education Code section 44977 by Statutes 1998, chapter 30, not the renumbering of former 1959 Education Code section 13467, imposes a potential reimbursable state-mandated program.

The primary amendment made by Statutes 1998, chapter 30, is the addition of the provision, that “[t]he sick leave, including accumulated sick leave, and the five-month [differential pay] period shall run consecutively.” Prior to this amendment, the statute was subject to alternative interpretations. Education Code section 44978, in addition to providing a minimum of 10 days of annual sick leave for full-time certificated employees, states that “Section 44977 relating to compensation, shall not apply to the first 10 days of absence on account of illness or accident.”

⁹ The basic requirement to provide five months of differential pay to teachers absent on account of illness or accident was in effect well before the enactment of the test claim legislation, but was renumbered or restated in a “newly enacted” code section by Statutes 1976, chapter 1010.

¹⁰ Education Code section 3 states, “The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.”

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time. *In re Martin’s Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950). Opinions of the Attorney General, while not binding, are entitled to great weight. (*Henderson v. Board of Education* (1978) Cal.App.3d 875, 883.)

Previously, differential pay was calculated by many school districts to run for a maximum of five months immediately following the exhaustion of the annual sick leave allotment (waiting period), and concurrently with any accumulated sick leave the teacher may have carried over from previous years. This interpretation was supported by case law in the First and Second District Courts of Appeal and several Attorney General opinions. (*Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243; *Lute v. Covina Valley Unified School Dist.* (1988) 202 Cal.App.3d 1181; 29 Ops.Atty.Gen. 62, 63 (1957); 30 Ops.Atty.Gen. 307, 309 (1957); 53 Ops.Atty.Gen. 111, 113 (1970).)

Claimant asserts that Education Code section 44977 requires school districts to review eligibility for, process, calculate and pay sick leave differential pay in a manner different than the manner required under prior law; develop or update policies, procedures, and forms to carry out and train personnel on the requirements of the law.

DOF argues that since "school districts have been required to provide qualifying certificated employees with differential pay since the enactment of" Statutes 1971, chapter 1102, or prior to January 1, 1975, state reimbursement of the costs for processing differential pay is not required. DOF concurs that the statutory amendment results in new activities by requiring school districts to *modify* existing policies, procedures, computer programs and forms regarding sick leave and differential pay.

The Commission finds Education Code section 44977 imposes a new program or higher level of service for the following administrative activity performed by school districts:

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.)

Although elements of Education Code section 44977, as amended by Statutes 1998, chapter 30, are recognized by the Commission to impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, each of claimant's allegations must satisfy the scheme established in the Constitution, and as interpreted by the courts. Here, claimant proposes reimbursement for the payment of differential pay to certificated employees who continue to be absent after five months due to illness or accident *and* had accumulated sick leave available at the beginning of the illness or injury. The claimant concludes that the reimbursable period is equal to the lesser of : (a) the number of days the employee was absent beyond five months; (b) the number of days of accumulated sick leave used; or (c) five months.

When a teacher has accumulated sick leave available and remains out on leave due to illness or injury longer than five months after the initial waiting period, the district incurs greater costs for differential pay compared to the prior interpretation of concurrent running of accumulated sick leave and differential pay. For example, under the amended statute, if a teacher has 100 days accumulated sick leave, first the teacher satisfies the waiting period under Education Code section 44978, then uses all accumulated sick leave, and finally receives differential pay for five months or until the teacher returns to work. Under the former statutory interpretation, by the time that same teacher used up all of his or her accumulated sick leave, five months entitlement to differential pay, running concurrently, would never be available. When the injury or illness runs five months or less after the waiting period, or when the teacher has no accumulated sick

leave available, there is no difference between the prior interpretation and the amended statute in either application or cost to the district for differential pay.

However, based on the case law described below, the Commission finds that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The courts have consistently held that additional costs alone do not equate to a higher level of service. In *County of Los Angeles*, the California Supreme Court rejected the argument that the definition of “increased level of service” as “additional costs” mandated on local governmental agencies continued to apply to mandates determinations following the repeal of former Revenue and Taxation Code section 2231, subdivision (e). The Court stated,

If the Legislature had intended to continue to equate “increased level of service” with “additional costs,” then the provision would be circular: “costs mandated by the state” are defined as “increased costs” due to an “increased level of service,” which, in turn, would be defined as “additional costs.” We decline to accept such an interpretation.¹¹

The Court then went on to examine the meaning of article XIII B, section 6, finding that “it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs.’”¹² Furthermore, “Bearing the costs of salaries, unemployment insurance, and workers’ compensation coverage – costs which all employers must bear – neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.”¹³

The Court in *County of Los Angeles* was making a mandate determination on amended Labor Code provisions related to workers’ compensation, a law that impacts public and private employers alike. However, the court in *City of Anaheim v. State of California* dealt with costs from a statutory change to the Public Employees Retirement System.¹⁴ The appellant’s (City’s) argument was since the statute “specifically dealt with pensions for public employees, it imposed unique requirements on local governments that did not apply to all state residents or entities.”¹⁵ Nonetheless, the court concluded that “[s]uch an argument, while appealing on the surface, must fail.”¹⁶ After citing the California Supreme Court in *County of Los Angeles*, the court in *City of Anaheim* concluded, “Similarly, City is faced with a higher cost of compensation to its employees. *This is not the same as a higher cost of providing services to the public.*”¹⁷

¹¹ *County of Los Angeles, supra*, 43 Cal.3d at pages 54-55.

¹² *Id.* at page 56.

¹³ *Id.* at page 61.

¹⁴ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d. 1478.

¹⁵ *Id.* at pages 1483-1484.

¹⁶ *Id.* at page 1484.

¹⁷ *Ibid.*

(Emphasis added.) Further, in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1194, regarding the claim that requiring PERS and workers compensation death benefits for a particular group of public employees resulted in a reimbursable state mandate, the court upheld the trial court's finding that the statute "created an increased cost but not an increased level of service by local governments."

The Commission finds these cases answer the issue here in which the cost of a particular benefit to public employees is increased in certain circumstances, but there is no concomitant increase in the level of service to the public. Therefore, the Commission finds no new program or higher level of service within the meaning of article XIII B, section 6, for any increased costs for the amount of differential pay compensation when it is calculated consecutively, rather than concurrently, with accumulated sick leave.

Education Code section 44978.1.

This Education Code section, as added by Statutes 1998, chapter 30¹⁸ provides:

When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the end of the five-month differential pay period, the employee shall, if not placed in another position, be placed on a reemployment list. The list shall last for 24 months for probationary employees, or 39 months for permanent employees. When the employee is medically able, they shall be returned to a position for which they are credentialed and qualified. The 24-month or 39-month reemployment period shall begin at the end of the five-month differential pay period described in Education Code section 44977.

Claimant asserts that Education Code section 44978.1 requires school districts to develop and maintain reemployment lists and track reemployment dates for certain certificated employees; identify positions for which an employee eligible for reemployment is qualified and credentialed to perform; and reemploy the employee in such a position; and develop or update policies, procedures, and forms to carry out and train personnel on the requirements of the law.

Department of Finance agrees with claimant that Education Code section 44978.1 requires school districts to track the reemployment of certificated employees who are placed on a reemployment list, resulting in new activities. However, regarding some of the other activities and costs alleged by claimant, DOF asserts that determination of whether an employee is medically able to return to work is made by the employee's physician; there are no school district costs for this alleged activity; and, although reimbursement for the administrative costs associated with reemployment is allowable, districts are not entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed.

Placing certificated employees who are not medically able to resume duties on a 24 or 39-month reemployment list, pursuant to Education Code section 44978.1, is a new activity mandated by the state. However, the Education Code includes several other similar reemployment statutes, including Education Code section 45192, which requires that classified employees be placed on a 39-month reemployment list following the exhaustion of all sick leave and vacation time. There are also similar reemployment statutes for certificated and classified employees who have been

¹⁸ Effective and operative January 1, 1999.

laid off. (Ed. Code, §§ 44956, 44298.) Thus, in order to implement the new requirements of Education Code section 44978.1, school districts will need to modify existing policies and procedures for other categories of reemployment, and establish and maintain a reemployment list for the statutory period for certificated employees who are not medically able to resume the duties of a teacher.

DOF asserts that districts are not entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed. Education Code section 44978.1 does not require school districts to create a *new* position for a teacher on the reemployment list, therefore any costs for the payment of salaries or benefits for reemployed teachers are not reimbursable. As discussed above in reference to the amended differential pay statute, the courts have found that “Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.”¹⁹ Any cost differentials for salary and benefits between filling a position with a teacher on a reemployment list compared with using a new hire are not costs subject to subvention by the state pursuant to this statute.

Thus, the Commission finds Education Code section 44978.1 imposes a new program or higher level of service for the following activities performed by school district administration:

- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the reemployment paperwork, but not the costs of salary and benefits for the employee once they return to work.)

Issue 3: Does the test claim legislation found to require a new program or higher level of service also impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant states, “[t]he estimated costs which result from the mandate exceed \$200 for Fiscal Year 1998-99 and in subsequent fiscal years,” and none of the Government Code section 17556 exceptions apply.

¹⁹ *County of Los Angeles, supra*, 43 Cal.3d at page 61.

Government Code section 17556 presents a list of seven exceptions to finding “costs mandated by the state,” even after making a finding of a required new program or higher level of service. Government Code section 17556, subdivision (a), states the Commission shall not find costs mandated by the state, if:

The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

Senate Bill 1019 (Stat. 1998, ch. 30) was sponsored by the Association of California School Administrators (ACSA), a voluntary organization of education administrators, including superintendents and principals. It is impossible to determine from the documentation in the bill file which members of the ACSA supported the bill, and in turn which members, if any, had the delegated authorization of their school district governing boards to support the bill. As an example, the bill file also includes a letter from the Assistant Superintendent of Fallbrook Union Elementary School District, stating that the bill is supported by the ACSA, “and I am an ACSA member, but I think that passage of the bill would be a mistake.”²⁰ This letter, on school district letterhead, although in this case in opposition rather than in support of the bill, is more representative of a “request” as described in subdivision (a). Therefore, although the membership of the ACSA likely includes individuals who might be considered “delegated representatives” if they sponsored the legislation on behalf of their school districts in their capacity as superintendents, the Commission finds that the sponsorship of the legislation by the lobbying arm of this statewide organization does not constitute a “request” within the meaning of Government Code section 17556, subdivision (a).

Government Code section 17556, subdivision (b) provides an exception to reimbursement if “[t]he statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.” This exception does not apply to this test claim because the 1998 amendment to Education Code section 44977 was in direct opposition to earlier case law interpreting differential pay as running *concurrently* with accumulated sick leave.

The Commission agrees that none of the other exceptions to finding a reimbursable state mandate under Government Code section 17556 apply here. Accordingly, the Commission finds that the activities identified in the conclusion, below, qualify for reimbursement because the activities impose costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Education Code sections 44977 and 44978.1, as added or amended by Statutes 1998, chapter 30, effective and operative on January 1, 1999, impose new programs or higher levels of service for school districts within the meaning of article XIII B,

²⁰ Letter dated March 9, 1998.

section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.) (Ed. Code, § 44977.)
- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.) (Ed. Code, § 44978.1.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not reimbursement of salary and benefits for the employee once they return to work.) (Ed. Code, § 44978.1.)

The Commission denies any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CSAC EXCESS INSURANCE
AUTHORITY et al.,

Plaintiffs and Respondents,

v.

COMMISSION ON STATE MANDATES,

Defendant and Appellant;

CALIFORNIA DEPARTMENT OF
FINANCE,

Intervener and Appellant.

B188169

(Los Angeles County
Super. Ct. Nos. BS092146
& BS095456)

FILED

2012

APPELLATE DISTRICT

LOS ANGELES COUNTY

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed in part; reversed in part with directions.

Camille Shelton and Katherine A. Tokarski for Defendant and Appellant
Commission on State Mandates.

Bill Lockyer, Attorney General, Louis R. Maura, Assistant Attorney General, Christopher E. Krueger and Jack C. Woodside, Deputy Attorneys General, for Intervener and Appellant California Department of Finance.

Stephen D. Underwood; Robin Lynn Clauson, Newport Beach City Attorney, and Aaron C. Harp, Assistant City Attorney, for Plaintiffs and Respondents.

In this appeal from a judgment granting consolidated writ of mandate petitions, we affirm in part, reverse in part, and reinstate in part the administrative rulings of appellant Commission on State Mandates (commission).

INTRODUCTION

Article XIII B, section 6 of the California Constitution provides in relevant part that “[w]henver 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 such local government for the costs of such program or increased level of service” (article XIII B, section 6). In this appeal, we must decide whether three workers’ compensation statutes (Lab. Code, §§ 3212.1, 3212.11, 3213.2 (the test statutes)),¹ which provide certain publicly employed peace officers, firefighters, and lifeguards with a rebuttable presumption that their injuries arose out of and in the course of employment, mandated a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6.

Respondents CSAC (California State Association of Counties) Excess Insurance Authority (hereafter EIA), a joint powers authority that provides insurance to its 54 member counties, and City of Newport Beach (city) petitioned for writs of mandate to

¹ All further undesignated statutory references are to the Labor Code.

vacate the commission's denials of their claims for reimbursement of state-mandated costs created by the test statutes. The commission and the California Department of Finance (department), which filed a complaint in intervention, opposed the consolidated writ petitions and demurred on the ground that the EIA lacked standing. The superior court overruled the demurrer and entered judgment for the EIA and the city. The superior court issued a peremptory writ of mandate that vacated the commission's rulings and directed it to determine the amount of increased workers' compensation benefits paid, if any, by the city and the EIA's member counties as a result of the presumptions created by the test statutes.

In this appeal from the judgment by the commission and the department, we conclude that the EIA has standing as a joint powers authority to sue for reimbursement of state-mandated costs on behalf of its member counties. We also conclude that because workers' compensation is not a program administered by local governments, the test statutes did not mandate a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6, notwithstanding any increased costs imposed on local governments by the statutory presumptions.

BACKGROUND

A. The Administrative Proceedings

The EIA is a joint powers authority. The EIA states that it "was formed in 1979 to provide insurance coverage, risk management and related services to its members in accordance with Government Code [section] 998.4. Specifically, with respect to the issues presented here, the EIA provides both primary and excess workers' compensation coverage for member counties, including the payment of claims and losses arising out of work related injuries." The EIA's members include 54 of the 58 California counties. According to the EIA, "[e]very California county except Los Angeles, San Francisco, Orange and San Mateo [is a member] of the EIA."

In 2002, the County of Tehama, which is not a party to this appeal, the EIA, and the city filed test claims with the commission concerning the three test statutes. A "test

claim” is “the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.” (§ 17521.) The test claims alleged that each test statute, by creating a presumption of industrial causation in favor of certain public employees seeking workers’ compensation benefits for work-related injuries, imposed state-mandated costs for which reimbursement is required under article XIII B, section 6.

In the first test claim, the County of Tehama and the EIA challenged section 3212.1, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers and firefighters who, either during or within a specified period following termination of service, develop cancer, including leukemia, after being exposed to a known carcinogen. Section 3212.1, subdivision (d) allows employers to rebut this presumption with “evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer.” If the presumption is not rebutted, “the appeals board is bound to find in accordance with the presumption.” (§ 3212.1, subd. (d).)

In the second test claim, the County of Tehama and the EIA challenged section 3213.2, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt (a belt used to hold a gun, handcuffs, baton, and other law enforcement items) as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury. Section 3213.2, subdivision (b) allows employers to rebut this presumption with “other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.”

In the third test claim, the city challenged section 3212.11, which grants a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment. Section 3212.11 allows employers to rebut this presumption with “other evidence, but unless so controverted, the appeals board shall find in accordance with it.”

The commission denied each test claim after determining that each test statute's respective presumption of industrial causation did not mandate increased costs for which local entities must be reimbursed under article XIII B, section 6. The commission also concluded that the EIA lacked standing to pursue the test claims because the EIA does not employ the peace officers, firefighters, or lifeguards affected by the test statutes and is a separate entity from its member counties.

B. The Judicial Proceeding

The EIA and the city petitioned for writs of mandate to vacate the commission's denials of their respective test claims. (Code Civ. Proc., § 1094.5.) The commission and the department, which filed a complaint in intervention, opposed the consolidated petitions. (Gov. Code, § 13070; see *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1198.)

The commission and the department challenged on demurrer the EIA's standing to prosecute the test claims. When the test claims were filed, Government Code section 17520 defined "special district" to include joint powers authorities and Government Code section 17552 defined "local agency" to include special districts. The superior court determined that because the EIA, as a joint powers authority, was a special district under Government Code section 17520 when the test claims were filed, the EIA was a local agency under Government Code section 17552 and, therefore, had standing to file the test claims. The superior court noted that although in 2004, the Legislature deleted joint powers agencies or authorities from the definition of special district (Gov. Code, § 17520, as amended by Stats. 2004, ch. 890), because the EIA's test claims were filed before the amendment took effect, the amendment did not apply to the EIA's pending test claims.

Regarding the issue of state-mandated costs, the superior court concluded that the test statutes mandated a new program or increased services under article XIII B, section 6. The superior court reasoned that "[l]egislation that expands the ability of an injured employee to prove that his injury is job related, expands the cost to the employer to compensate its injured workers. The assertion by the state that the employer can

somehow ‘opt out’ of that cost increase is clearly without merit. By contending that the counties need not ‘dispute’ the presumptions mandated by the legislature, that the injury is job related, misses the point. The counties are entitled to subvention, not for increased LITIGATION costs, but for the increased costs of COMPENSATING their injured workers which has been mandated by the legislature.”

The superior court granted judgment to the EIA and the city, and issued a peremptory writ of mandate directing the commission to vacate its administrative rulings and “to determine the amount, if any, that the cost of providing workers’ compensation benefits to the employees of the City of Newport Beach and each member county [of the EIA] has been increased by the enactment of the presumptions created by” the test statutes. On appeal, the commission and the department challenge the EIA’s standing to prosecute the test claims and argue that the test statutes do not mandate a new program or increased services within an existing program for which reimbursement is required under article XIII B, section 6.

DISCUSSION

I

Standing

The commission and the department contend that the EIA lacks standing to prosecute the test claims on behalf of its member counties. We disagree.

In 1984, the Legislature established the administrative procedure by which local agencies and school districts may file claims with the commission for reimbursement of costs mandated by the state. (Gov. Code, §§ 17500, 17551, subd. (a).) In this context, “costs mandated by the state” means “any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . 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.” (Gov. Code, § 17514.)

Given that Government Code section 17551, subdivision (a) allows local agencies and school districts to seek reimbursement of state-mandated costs and Government Code

section 17518 includes counties within the definition of local agency, it must follow that the EIA's 54 member counties have standing to bring test claims for reimbursement of state-mandated costs. We must decide whether the EIA has standing to bring the test claims on behalf of its member counties.

When the EIA filed its test claims in 2002, Government Code section 17520 included joint powers authorities within the definition of special districts. As of January 1, 2005, however, joint powers agencies were eliminated from the definition of special districts. (Stats. 2004, ch. 890 (AB 2856).) Because the amended definition of special districts applies to pending cases such as this one, we conclude that the EIA is not a special district under section 17520 and has no standing to pursue its test claims on that basis. (See *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223 [Proposition 64, which limited standing to bring actions under the unfair competition law to governmental parties and injured private parties, eliminated the appellant's standing to pursue an appeal that was pending when the proposition was passed].)

Nevertheless, we agree with the EIA that it may pursue the test claims on behalf of its member counties because “[r]ather than having 54 counties bring individual test claims, the EIA, in its representative capacity is statutorily authorized to proceed on its members’ behalf.”²

According to the joint powers agreement, the EIA's purpose is “to jointly develop and fund insurance programs as determined. Such programs may include, but are not limited to, the creation of joint insurance funds, including excess insurance funds, the pooling of self-insured claims and losses, purchased insurance, including reinsurance,

² Under *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, the companion case to *Californians for Disability Rights v. Mervyn's LLC*, *supra*, 39 Cal.4th 223, even if we were to conclude that the EIA lacked standing to bring a test claim on behalf of its member counties, it is possible that the EIA would be granted leave to amend to identify the county or counties that might be named as a plaintiff. Given our determination that the EIA has standing as a representative of its member counties to pursue the test claims, we need not address this unbriefed issue.

and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services.”

By law, the EIA as a joint powers authority possesses the common powers enumerated in the joint powers agreement and may exercise those powers in the manner provided therein. (Gov. Code, § 6508.) California law provides that a joint powers agency may sue and be sued in its own name if it is authorized in its own name to do any or all of the following: to make and enter contracts; to employ agents and employees; to acquire, construct, manage, maintain, or operate any building, works, or improvements; to acquire, hold, or dispose of property; or to incur debts, liabilities, or obligations. (*Id.*, § 6508.) In this case, the joint powers agreement gave the EIA “all of the powers common to counties in California and all additional powers set forth in the joint powers law, and . . . authorized [it] to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following: [¶] (a) To make and enter into contracts. [¶] (b) To incur debts, liabilities, and obligations. [¶] (c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities. [¶] (d) To sue and be sued in its own name, and to settle any claim against it. . . .”

Given that the joint powers agreement expressly authorized the EIA to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of said powers, and to sue and be sued in its own name, we conclude that the joint powers agreement authorized the EIA to bring the test claims on behalf of its member counties, each of which qualifies as a local agency to bring a test claim under Government Code section 17518. Although as appellants point out, the EIA is a separate entity from the contracting counties and is not directly affected by the test statutes because it does not employ the peace officers, firefighters, and lifeguards specified in the test statutes, we conclude that those factors do not preclude the EIA from exercising its power under the agreement to sue on behalf of its member counties.

Appellants' reliance on *Kinlaw v. State of California* (1991) 54 Cal.3d 326 is misplaced. In *Kinlaw*, the plaintiffs filed suit as individual taxpayers and medically indigent adult residents of Alameda County to compel the state either to restore their Medi-Cal eligibility or to reimburse the county for their medical costs under article XIII B, section 6. The Supreme Court held that the plaintiffs in *Kinlaw* lacked standing because the right to reimbursement under article XIII B, section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (54 Cal.3d at p. 334.) The Supreme Court noted that the interest of the plaintiffs, "although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government." (*Id.* at p. 335.)

In this case, however, the EIA has standing to sue as a joint powers authority on behalf of its 54 member counties that have standing as local agencies to bring test claims. Unlike the plaintiffs in *Kinlaw*, the EIA claims standing not as an individual or as a taxpayer, but as a joint powers authority with the right to exercise "all of the powers common to counties in California," and "to do all acts necessary for the exercise of said powers," including the right to sue in its own name. We therefore distinguish *Kinlaw* and conclude that it does not deprive the EIA of standing in this case.

II

Article XIII B, Section 6

Article XIII B, section 6 provides in relevant part that "[w]henver 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 such local government for the costs of such program or increased level of service" We conclude that because the test statutes did not mandate a new program or higher level of service of an existing program, reimbursement under article XIII B, section 6 is not required.

A. The Purpose of Article XIII B, Section 6

Article XIII A, which was added to the California Constitution by Proposition 13 in 1978, imposed a limit on the power of state and local governments to adopt and levy taxes. Article XIII B, which was added to the Constitution by Proposition 4 in 1979, imposed a complementary limit on government spending. The two provisions “work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1.)

Article XIII B, section 6 prevents the state from shifting financial responsibility for governmental functions to local agencies by requiring the state to reimburse local agencies for the costs of providing a new program or higher level of service mandated by the state. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) “Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*Ibid.*)

B. State Mandates

We will assume for the sake of argument that the test statutes’ presumptions of industrial causation will impose some increased costs on local governments in the form of increased workers’ compensation benefit payments to injured local peace officers, firefighters, or lifeguards. The mere imposition of increased costs, however, is not determinative of whether the presumptions mandated a new program or higher level of service within an existing program as stated in article XIII B, section 6. “Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.” (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.) Whether the increased costs resulted from a state-mandated program or higher level of service presents solely a question of law as there are no disputed facts. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.)

As previously noted, “costs mandated by the state” means “any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . 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.” (Gov. Code, § 17514.) As the Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, “Looking at the language of section 6 then, it seems clear that by itself the term ‘higher level of service’ is meaningless. It must be read in conjunction with the predecessor phrase ‘new program’ to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs.’ But the term ‘program’ itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term--programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*Id.* at p. 56; see *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1191.)

In this case, the test statutes affect the administration of the workers’ compensation program. The Supreme Court has held that statutes increasing workers’ compensation benefits to reflect cost-of-living increases did not mandate either a new program or higher level of service in an existing program. “Workers’ compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers’ compensation or to be providing services incidental to administration of the program. Workers’ compensation is administered by the state through the Division of Industrial Accidents and the Workers’ Compensation Appeals Board. (See Lab. Code,

§ 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6." (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at pp. 57-58.)

We similarly conclude that because workers' compensation is not a program administered by local governments, the test statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test statutes' presumptions will impose increased workers' compensation costs solely on local entities. Because the test statutes do not involve a program administered by local governments, the increased costs resulting from the presumptions imposed to implement a public policy do not qualify for reimbursement under article XIII B, section 6. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51 [state law extending mandatory coverage under state's unemployment insurance law to include state and local governments did not mandate a new program or higher level of service]; *City of Richmond v. Commission on State Mandates*, *supra*, 64 Cal.App.4th 1190 [state law requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system did not mandate a new program or higher level of service].)

Respondents' reliance on *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 is misplaced. In *Carmel Valley*, the appellate court concluded that executive orders requiring local agencies to purchase updated firefighting equipment mandated both a new program and a higher level of service within an existing program because firefighting is "a peculiarly governmental function" (*id.* at p. 537) and the executive orders, to implement a state policy, imposed unique requirements on local governments that did not apply generally to all residents and entities in the state (*ibid.*). In this case, on the other hand, providing workers' compensation benefits is not a peculiarly governmental function and, even assuming the

test statutes implemented a state policy of paying increased workers' compensation benefits to local peace officers, firefighters, and lifeguards, the costs are not reimbursable because they do not arise within an existing program administered by local governments.

Respondents contend that the effect of the test statutes, increased costs, is borne only by local governments. As peace officers, firefighters, and lifeguards are uniquely governmental employees, respondents argue the test statutes do not apply generally to all entities in the state. The question which remains, however, is whether increased costs alone equate to a higher level of service within the meaning of article XIII B, section 6, even if paid only by local entities and not the private sector. We conclude they do not.

In a similar case, the City of Anaheim sought reimbursement for costs it incurred as a result of a statute that temporarily increased retirement benefits to public employees. The City of Anaheim argued, as do respondents, that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities." (*City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1483-1484.) The court held that subvention was not required because the program involved, the Public Employees' Retirement System, is not a program administered by local agencies. Such is the case here with the workers' compensation program. As noted, the program is administered by the state, not the local authorities.

The court also noted: "Moreover, the goals of article XIII B of the California Constitution 'were to protect residents from excessive taxation and government spending . . . [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies. . . . Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage--costs which all employers must bear--neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.'" (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a

higher cost of providing services to the public.” (*City of Anaheim v. State of California, supra*, 189 Cal.App.3d at p. 1484.)

The reasoning applies here. The service provided by the counties represented by the EIA and the city, workers’ compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an increased level of service within the meaning of article XIII B, section 6. (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at pp. 57-58.)

DISPOSITION

The judgment granting the petitions for writ of mandate is affirmed in part on the issue of standing and reversed in part on the issue of reimbursement of state-mandated costs under article XIII B, section 6. The superior court is directed to enter a new and different judgment denying the petitions for writ of mandate and to reinstate that portion of the administrative rulings denying the test claims. The parties are to bear their own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.

BILL ANALYSIS

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

AB 375 (Campos) - School employees: sick leave: paternity and maternity leave.

| | |
|-------------------------------|----------------------------|
| | |
| Version: July 8, 2015 | Policy Vote: ED. 8 - 1 |
| Urgency: No | Mandate: No |
| Hearing Date: August 17, 2015 | Consultant: Jillian Kissee |

This bill meets the criteria for referral to the Suspense File.

Bill

Summary: This bill expands the instances in which differential pay is provided for purposes of maternity and paternity leave to include the 12 workweek protected leave.

Fiscal

Impact:

Potential expansion of the existing Differential Pay and Reemployment mandate for one-time activities to modify current processes to include differential pay for maternity and paternity protected leave which could drive costs in the tens of thousands statewide. To the extent this bill imposes a mandate this could create pressure to increase the K-12 mandate block grant. (Proposition 98)

Background:

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Differential Pay

Existing law provides differential pay to certificated employees for illness or accident. It specifies that when a person employed in a position requiring certification qualifications has exhausted all available sick leave, and continues to be absent from their duties due to illness or accident for an additional period of five school months, the amount deducted from the employee's salary for any of the additional five months, must not exceed the sum that is actually paid a substitute employed to cover for the absence. Existing law specifies the following:

- a) Sick leave, including accumulated sick leave, and the five-month period shall run consecutively.
- b) An employee shall not be provided more than one five-month period per illness or accident. (Education Code § 44977)

Existing law also requires that any employee has the right to use sick leave and to obtain differential pay for absences necessitated by pregnancy, miscarriage, childbirth, and recovery. (Education Code § 44978)

Pregnancy Disability Leave

Existing law provides that it is unlawful to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take leave not to exceed four months. The employee is entitled to use vacation leave during this time. Once the vacation time is exhausted, the employee can receive differential pay for the remaining time, for up to five months. (Government Code § 12945 and Education Code § 44977)

Protected Leave

Existing law also prohibits, except under certain circumstances, the refusal to grant a request by any employee with a certain amount of service to take up to a total of 12 workweeks in a 12 month period for family care and medical leave. The employer is required to provide the employee a guarantee of employment in the same or comparable position upon the termination of the leave. The law specifies that this protected leave is separate and distinct from the pregnancy disability leave. Once an employee is cleared to return to work by a physician, the employee may take this protected leave. (Government Code §

?

12945.2)

The federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provides this unpaid, job-protected leave for the purpose of bonding with a child, caring for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. But there is no pay associated with the FMLA and CFRA, other than the employee's accrued vacation or other accrued time off that may apply. Once that time is exhausted, the certificated employee is unpaid for the remaining weeks. The FMLA and CFRA are only employment protected leaves.

Certificated Employees

Certificated employees belong to the California Teachers Association (CTA) and include, teachers, speech therapists, school psychologists, nurses, and similar classifications. Administrators are certificated employees who are not teachers or student services personnel. Administrators include principals, assistant principals, program directors or coordinators, and other certificated staff members who are not providing direct services to students.

Proposed Law:

This bill expands the instances in which differential pay is provided for purposes of maternity and paternity leave to include the 12 workweek protected leave.

Specifically, this bill provides that when a certificated employee has exhausted all available sick leave and continues to be absent from their duties due to maternity and paternity leave pursuant to the CFRA, for a period of up to 12 school weeks, the amount deducted from the employee's salary for any of the additional 12 weeks, must not exceed the sum that is paid a substitute employee to fill in for the absence.

The bill also provides that:

The 12 week period is offset by the use of any period of sick leave during this time.

Not more than one 12 week period per maternity or paternity leave is to be provided.

Employees on maternity or paternity protected leave must not be denied access to differential pay.

Finally, this bill provides that if its provisions conflict with a provision of a collective bargaining agreement entered into before January 1, 2016, they do not apply until expiration or renewal of that collective bargaining agreement.

Related

Legislation: AB 1562 (Gomez, 2014) would have amended existing law governing unpaid family and medical leave with respect to public or private school employees, as specified. This bill failed passage in this committee.

Staff

Comments: This bill expands the provision of differential pay to include those on both maternity and paternity protected leave who are currently ineligible for this benefit under existing law. The extent to which certificated employees will access this new benefit is unknown. Currently, after the employee's sick leave is depleted, any remaining time that the employee is absent during protected leave would be unpaid. The expanded differential pay requirement will likely provide employees on maternity and paternity leave an incentive to be absent longer than they otherwise would have been if they were not paid during this time. However, the strength of this incentive will depend on the how long the employee can go without earning his or her full salary.

In 2003, the Commission on State Mandates (Commission) approved a mandate related to differential pay and reemployment lists for employees on differential leave pay. A test claim was submitted in response to a statute enacted in 1998 that required when calculating differential pay, sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. Prior to this statute, there was an interpretation that accumulated sick leave ran concurrently with the five months entitlement to differential pay. This law likely increased costs to school districts as they were no longer allowed to offset the five months differential pay with any accumulated sick leave the employee might have. However, the Commission ruled that this change in calculation, while it may increase costs to school districts in some instances, it

does not require an associated increased level of service to the public. Therefore, reimbursement of salaries related to providing differential pay was not approved.

The Commission did, however, determine administrative activities related to the change in calculating differential pay to be reimbursable. Therefore, it could be assumed that the cost of similar activities could also be claimed as a result of this bill, such as one-time workload to modify existing processes to conform to the new law. If half of the state's school districts spent 2 hours at a rate of \$60 per hour, including benefits, on this work, the state could be liable for reimbursement costs in about the tens of thousands.

If enacted, school districts may experience significant costs pressures related to providing a benefit that was not previously required. They will not realize the savings attributed to unpaid maternity and paternity protected leave that they currently experience. Costs will ultimately be dependent upon the amount of sick leave taken by applicable employees and how long they remain absent and obtain differential pay. However, employer costs based on the differential pay program should not exceed what is normally paid to a school employee who would otherwise be working.

-- END --

BILL ANALYSIS

| | |
|---------------------------------|--------|
| SENATE RULES COMMITTEE | AB 375 |
| Office of Senate Floor Analyses | |
| (916) 651-1520 Fax: (916) | |
| 327-4478 | |

THIRD READING

Bill No: AB 375
 Author: Campos (D)
 Amended: 7/8/15 in Senate
 Vote: 21

SENATE EDUCATION COMMITTEE: 8-1, 6/24/15
 AYES: Liu, Block, Hancock, Leyva, Mendoza, Monning, Pan, Vidak
 NOES: Runner

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/27/15
 AYES: Lara, Beall, Hill, Leyva, Mendoza
 NOES: Bates, Nielsen

ASSEMBLY FLOOR: 58-22, 6/1/15 - See last page for vote

SUBJECT: School employees: sick leave: paternity and
 maternity leave

SOURCE: Author

DIGEST: This bill requires certificated school employees on
 maternity or paternity leave to receive differential pay for up
 to 12 weeks of unpaid family and medical leave.

ANALYSIS:

Existing law:

1) Specifies during each school year, when a person employed in a

position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due to him or her for any of the additional five months, in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee. Specifies the following:

- a) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.
 - b) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code § 44977)
- 2) Specifies that Section 44977 shall not apply to any school district which adopts and maintains in effect a rule which provides that when a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he shall receive 50 percent or more of his regular salary during the period of such absence and nothing in Section 44977 shall be construed as preventing the governing board of any district from adopting any such rule. When a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules

and regulations shall not conflict with rules and regulations of the State Board of Education. Nothing shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons requiring certification qualifications. This shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district. (Education Code § 44983)

This bill:

- 1) Provides that, during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on maternity leave or paternity leave for a period of up to twelve school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the twelve weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.
- 2) Specifies that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave, as specified.
- 3) Specifies that an employee shall not be provided more than one 12-week period per maternity leave or paternity leave. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the 12-week period in a subsequent school year.
- 4) Provides that an employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not

be denied access to differential pay while on that leave.

5) Provides that these provisions shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

6) To the extent that the changes made by this bill conflict with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, this bill shall not apply until expiration or renewal of that collective bargaining agreement.

7) Provides that for purposes of this section, maternity or paternity leave means leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

Comments

Need for the bill. According to the author's office, "Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression." The author's office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave.

Protected leave. The federal Family Medical Leave Act (FMLA)

and the California Family Rights Act (CFRA) provide certain employees up to 12 weeks of unpaid, job-protected leave a year for the purpose of bonding with a child, care for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. But there is no pay associated with the FMLA and CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are only employment protected leaves.

Paid Family Leave (PFL). The PFL program extends disability compensation to individuals (male or female) who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child, or a child in connection with adoption or foster care placement. The PFL program is a component of the State Disability Insurance (SDI) program and workers covered by the SDI program are also covered for this benefit. The maximum benefit is six times the weekly benefit amount, with no more than six weeks of PFL benefits paid within any 12-month period. Employees may only be eligible for the PFL program if they are covered by the SDI program through a negotiated agreement with the State of California. If an employee does not pay into the SDI program, he or she would not be eligible to receive disability compensation under PFL. In this scenario and assuming the employee is on leave for bonding time, the employee would need to use vacation time, sick leave, or personal necessity to receive compensation or elect to take leave without pay.

Differential pay. Existing law authorizes that during the time a certificated employee is on pregnancy disability leave after the birth of a child, the employee may use sick leave and after this is exhausted, can receive differential pay for the remaining time. Once the disability leave period of six to eight weeks is over, then the employee may start the 12-week leave period under FMLA. During this time, the certificated employee may be able to use accrued sick leave, but once that time is exhausted, the certificated employee is unpaid for the remaining weeks.

This bill requires school employers to pay differential pay for certificated employees who take the 12-week FMLA maternity or paternity leave. Differential pay is calculated by subtracting

the cost of a substitute employee from the certificated employee's salary, e.g., if the certificated employee makes \$50,000 and the substitute cost is \$35,000, then the employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick time.

Paid parental leave in other countries. A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, only four did not provide paid maternity leave for women-Lesotho, Papua New Guinea, Swaziland, and the United States. While these four countries did provide some form of maternity leave, there was no requirement that it be paid leave. As previously mentioned in the analysis, the FMLA provides for up to three months of unpaid maternity and/or paternity leave.

FISCAL EFFECT: Appropriation: No Fiscal
Com.:NoLocal: No

According to the Senate Appropriations Committee, this bill could result in the potential expansion of the existing Differential Pay and Reemployment mandate for one-time activities to modify current processes to include differential pay for maternity and paternity protected leave which could drive costs in the tens of thousands statewide. To the extent this bill imposes a mandate, this could create pressure to increase the K-12 mandate block grant.

SUPPORT: (Verified8/29/15)

American Federation of State, County and Municipal Employees
California Democrats for Education Reform
California Federation of Teachers
California Teachers Association
Future is Now
Luther Burbank Education Association
San Jose Teachers Association
South Bay Labor Council
South Bay Pride at Work
United Teachers of Santa Clara

OPPOSITION: (Verified8/27/15)

Association of California School Administrators
California School Boards Association

ASSEMBLY FLOOR: 58-22, 6/1/15

AYES: Alejo, Bloom, Bonilla, Bonta, Brown, Burke, Calderon,
Campos, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh,
Daly, Dodd, Eggman, Frazier, Cristina Garcia, Eduardo Garcia,
Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Roger Hernández,
Holden, Irwin, Jones-Sawyer, Lackey, Levine, Linder, Lopez,
Low, Mathis, McCarty, Medina, Mullin, Nazarian, O'Donnell,
Olsen, Perea, Quirk, Rendon, Ridley-Thomas, Rodriguez, Salas,
Santiago, Mark Stone, Thurmond, Ting, Weber, Wilk, Williams,
Wood, Atkins

NOES: Achadjian, Travis Allen, Baker, Bigelow, Brough, Chang,
Dahle, Beth Gaines, Gallagher, Grove, Hadley, Harper, Jones,
Kim, Maienschein, Mayes, Melendez, Obernolte, Patterson,
Steinorth, Wagner, Waldron

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