

Edmund G. Brown Jr.
GOVERNOR



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REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2011 – December 31, 2011

Nancy Patton
Acting Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562
www.csm.ca.gov

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INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.¹

This report includes a summary of five test claims the Commission denied during the period from January 1, 2011 through December 31, 2011. The complete text of the Statements of Decision for the denied claims may be found at http://www.csm.ca.gov/denied_mandates.shtml.

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1188.2.

¹ Government Code section 17601.

SUMMARY OF DENIED CLAIMS²

Employment of Community College Faculty and Administrators

02-TC-27

Education Code Sections 70901(b)(1)(B), 87356, 87357, 87358, 87359, 87360, 87610.1, 87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, 87743.5

Statutes 1981, Chapter 470; Statutes 1988, Chapter 973; Statutes 1990, Chapter 1302; Statutes 1993, Chapter 506; Statutes 1995, Chapter 758; Statutes 1998, Chapter 1023; Statutes 2000, Chapter 124

California Code of Regulations, Title 5, Sections 53130, 53403, 53406, 53407, 53410, 53410.1, 53412, 53414, 53415, 53416, 53417, 53420, 53430

Register 90, No. 37 (July 5, 1990), Register 90, No. 49 (Nov. 30, 1990), Register 91, No. 23 (June 7, 1991), Register 91, No. 50 (July 19, 1991), Register 92, No. 9 (Nov. 24, 1991), Register 92, No. 26 (July 27, 1992), Register 92, No. 45 (Nov. 6, 1992), Register 93, No. 25 (June 4, 1993), Register 93, No. 42 (Nov. 4, 1993), Register 93, No. 46 (Oct. 8, 1993), Register 94, No. 38 (Oct. 6, 1994), Register 95, No. 19 (Mar. 19, 1995), Register 96, No. 40 (Oct. 4, 1996)

Test Claim Filed: June 13, 2003

Statement of Decision Adopted: July 28, 2011

This test claim addresses various activities related to determining the minimum qualifications for academic employees in community colleges, as well as for hiring procedures, evaluating, and providing tenure grievance procedures and faculty service areas for them.

Most of the test claim statutes are based on the Community College Reform Act of 1988 (1988 Reform Act), which abolished the credential system for community college faculty and administrators, and required the Board of Governors of the California Community Colleges (Board of Governors) to establish minimum standards for the employment of academic and administrative staff in community colleges.

The 1988 Reform Act also: (1) changed faculty evaluation procedures; (2) set up an arbitration process for grievances filed against tenure evaluation procedures; and (3) required community college districts to establish “faculty service areas” defined as instructional subject areas that each faculty member is required to qualify for.

The Commission denied this test claim, finding that although the activities alleged in the test claim mandate a new program or higher level of service, there is no substantial evidence in the record to support a finding that the claimant has incurred increased costs mandated by the state pursuant to Government Code section 17514 to perform these activities.

² The Commission’s complete Statements of Decision for these claims may be found at http://www.csm.ca.gov/denied_mandates.shtml.

School Facilities Funding Requirements

02-TC-30, 02-TC-43 and 09-TC-01

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, 39003, 39120 and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183; Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992 and 1002; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes 2002, Chapters 33, 199, 935, 1075, and 1168

Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23
Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668;
Statutes 2004, Chapter 689; Statutes 2007, Chapter 130; and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18, 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24

The Substantial Progress and Expenditure Audit Guide of May 2003; The School Facility Program Guidebook of January 2003; The State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1998

Test Claim Filed: June 4, 2003

Statement of Decision Adopted: March 24, 2011

This test claim addresses the activities required of school districts to comply with school facilities funding requirements (SFFRs). If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can

seek grant funding from the state through the State School Facility Program (SFP), which is funded through state bonds, and/or it may issue local bonds pursuant to one of several local bond acts. Usually, but not always, schools rely on a combination of state and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds, some of which were required by the statewide bond initiatives specifying the voting requirements for the issuance of local bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

The Commission denied this test claim, finding that the test claim statutes, regulations and alleged executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

1. Education Code sections 39003 and 39120 were repealed in 1993, prior to the beginning of the potential reimbursement period for this test claim, and thus, cannot be reimbursable.
2. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002 (SB 62), because this statute was the subject of a previous final decision of the Commission, Acquisition of Agricultural Land for a School Site (98-TC-04 and 01-TC-03).
3. Health and Safety Code section 25358.1, as added by Statutes 1999, chapter 23 (SB 47) does not impose a “program” and thus is not subject to reimbursement under article XIII B, section 6 of the California Constitution.
4. The Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1988 are not executive orders subject to Article XIII B, section 6.
5. Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 (SB 47), imposes requirements on DTSC, not school districts.
6. The statutes, which generally require compliance school facility funding requirements, do not mandate school districts to perform any activities because:
 - a) School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.
 - b) There is no evidence in the record to support a finding that school districts are practically compelled to: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, request and accept SFP funding, issue local bonds, or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.

Deferred Maintenance Programs

02-TC-44

Education Code Sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7 as added or amended by Statutes 1979, Chapter 282; Statutes 1980, Chapters 40 and 1354; Statutes 1981, Chapters 371, 649 and 1093; Statutes 1982, Chapter 525; Statutes 1983, Chapters 753 and 800, Statutes 1984, Chapters 1234 and 1751, Statutes 1985, Chapter 759 and 1587; Statutes 1986, Chapters 886, 1258 and 1451; Statutes 1987, Chapters 917 and 1254; Statutes 1989, Chapter 83 and 711; Statutes 1990, Chapter 1263; Statutes 1996, Chapter 277; Statutes 1999, Chapter 390; Statutes 2002, Chapters 1075 and 1084

Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2 as added or amended by Registers 80-16, 80-26, 81.18, 82-31, 86-9, 86-45, 86-49, 86-52, 87-17, 87-46 and 03-03

Test Claim Filed: June 27, 2003

Statement of Decision Adopted: October 27, 2011

This test claim addresses activities required as a condition of participation in a state grant program: the Deferred Maintenance Program (DMP). The DMP was established to assist school districts in maintaining school buildings. Any K-12 school district or county superintendent of schools may choose to participate in the DMP by establishing a “district deferred maintenance account” and seeking state matching funds to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board (SAB). As a condition of participating in the program, school districts are required to comply with certain program and accounting requirements.

The Commission denied this test claim, finding that the statutes and handbook alleged in the test claim do not impose a reimbursable state-mandated program for the following reasons:

1. The Deferred Maintenance Program Handbook of 2003 does not impose any requirements and is not a plan, but rather conveys an overview of what is required by statutes and regulations. Therefore, it is not an executive order within the meaning of article XIII B, section 6 of the California Constitution.
2. The requirements of the test claim statutes and regulations are only required as a condition of establishing a district deferred maintenance fund and seeking and receiving matching funds from the State DMP. Under the analysis in *Kern*, the requirements are downstream requirements of a district’s discretionary decision to participate in the program and do not impose a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Deferred Maintenance (CCD)

02-TC-48

Education Code Section 84660

Statutes 1981, Chapter 764; Statutes 1990, Chapter 1372

California Code of Regulations, Title 5, Sections 57201, 57202, 57205

Register 82, No. 28 (July 10, 1982), Pages 677-678; Register 91, No. 23 (June 7, 1991) Pages 377-378; Register 95, No. 23 (June 9, 1995) Page 379

“Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals” Chancellor’s Office, California Community Colleges

Test Claim Filed: June 27, 2003

Statement of Decision Adopted: October 27, 2011

The test claim statute and regulations consist of a grant program to assist community colleges with deferred maintenance and special repair. “Deferred maintenance and special repair” means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.” (Ed. Code, § 84660(b).)

To further this purpose, the Legislature established the Community College Facility Deferred Maintenance and Special Repair Program under which the Board of Governors of the California Community Colleges adopts rules and regulations for the allocation of funds for deferred maintenance and special repair of community college facilities. The regulations adopted by the Board of Governors list the general requirements for funding, such as preparing and submitting to the Chancellor a five-year maintenance plan

The Commission denied this test claim, finding that the test claim statutes and executive orders do not constitute a state- mandated program. The plain language in the statutes and regulations authorizes but does not require districts to apply for funding. It is the decision of a community college district to seek state funding for proposed deferred maintenance projects that triggers the activities required by the test claim statute, regulations, and manual. Under these circumstances, the activities are not mandated by the state.

School Bus Safety III

03-TC-01

Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6
Vehicle Code Sections 22112, 22454, 27316, 27316.5
Statutes 1999, Chapter 647 (AB 1573); Statutes 1999, Chapter 648 (AB 15); Statutes 2001,
Chapter 581 (SB 568); Statutes 2002, Chapter 360 (AB 2681); Statutes 2002,
Chapter 397 (SB 1685)

Test Claim Filed: July 2, 2003

Statement of Decision Adopted: May 26, 2011

This test claim addresses statutes that impose activities on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.

The Commission denied this test claim, finding that the test claim statutes:

- Do not impose any activities on school districts.
- Do not impose new programs or higher levels of service on school districts.
- Authorize, but do not require, school districts to provide school bus or school pupil activity bus transportation of pupils to and from school under state law.