

ARNOLD SCHWARZENEGGER
GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

Ana J. Matosantos
Chairperson
Director of the Department of Finance

Bill Lockyer
Vice Chairperson
State Treasurer

John Chiang
State Controller

Cathleen Cox
Acting Director
Office of Planning and Research

Paul Glaab
City Council Member
City of Laguna Niguel

J. Steven Worthley
County Supervisor
County of Tulare

Sarah Olsen
Public Member

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2010 – December 31, 2010

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

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	01
II. SUMMARY OF DENIED CLAIMS	02
<i>Redistricting: Senate and Congressional Districts, 02-TC-50</i>	02
<i>Airport Land Use Commission/Plans II, 03-TC-12 and 08-TC-05</i>	03
<i>California Environmental Quality Act, 03-TC-17</i>	04

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 three Statements of Decision adopted by the Commission during the period from January 1, 2010 through December 31, 2010. The complete text of the Statements of Decision 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

Redistricting: Senate and Congressional Districts 02-TC-50

Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)
Statutes 2001, Chapter 348 (AB 632), and
Senate's Election and Reapportionment Committee Instructions
(Dated September 24, 2001)

Test Claim Filed: June 30, 2003
Statement of Decision Adopted: January 29, 2010

This test claim involves statutes that set forth the Senate and congressional districts. Pursuant to article XXI of the California Constitution, the Legislature enacted the test claim statute (Stats. 2001, ch. 348, AB 632), to adjust the Senate and congressional district boundary lines. The test claim statute requires county elections officials to rely on the maps prepared by the Legislature to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and as a result an ambiguity or dispute arises.

The Commission denied this test claim. The Commission found that the test claim statute sets out the Senate and congressional district boundaries, but does not mandate any activities upon counties. The Commission also found requiring county elections officials to rely on specified maps mandates a new program or higher level of service on counties; however, it does not impose costs mandated by the state as defined by Government Code section 17514. Thus, 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.

In addition, on September 24, 2001, the claimant received a letter from Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment. The letter was pled as, "State Senate's Election and Reapportionment Committee Instructions Issued on September 24, 2001." The Commission found that the letter does not constitute an enacted statute or an issued executive order from the executive branch of the government, and thus is not within the Commission's jurisdiction and not subject to article XIII B, section 6.

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

Airport Land Use Commission/Plans II

03-TC-12 and 08-TC-05

Public Utilities Code Sections 21670, 21671.5, 21675, and 21676,
Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; Statutes 1972, Chapter 419; Statutes
1973, Chapter 844; Statutes 1980, Chapter 725; Statutes 1981, Chapter 714; Statutes 1982,
Chapter 1047; Statutes 1984, Chapter 1117; Statutes 1987, Chapter 1018; Statutes 1989, Chapter
306; Statutes 1990, Chapter 563; Statutes 1990, Chapter 1572; Statutes 1991, Chapter 140;
Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506;
Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971
Public Resources Code Section 21080
Statutes 1983, Chapter 872; Statutes 1985, Chapter 392; Statutes 1993, Chapter 1131;
Statutes 1994, Chapter 1230; Statutes 1996, Chapter 547

Test Claim Filed: September 26, 2003

Statement of Decision Adopted: March 26, 2010

This test claim involves the establishment of Airport Land Use Commissions (ALUCs) and the requirements to prepare, adopt, review and amend Airport Land use Compatibility Plans (ALUCPs). The test claim statutes specify that “the usual and necessary operating expenses of the commission shall be a county charge.” They also provide ALUCs with fee authority to “establish a schedule of fees necessary to comply with [the test claim statutes]” but do not provide similar fee authority to counties.

The Commission denied this test claim. The Commission found that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction over section 21670 as amended by Statutes 1994, chapter 644 or over the activity of developing the ALUCP required by section 21675 by June 30, 1991, because these statutes and activities were the subject of a final decision of the Commission in CSM 4507.
2. Any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county. Thus, the test claim statutes do not mandate a new program or higher level of service.

California Environmental Quality Act

03-TC-17

Education Code Section 17025 added by Statutes 1996, Chapter 1562

Government Code Sections 66031 and 66034 as amended by Statutes 1994, Chapter 300,
and Statutes 1990, Chapter 1455

Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4,
21081, 21082, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3,
21092.4, 21092.5, 21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152,
21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6,
21167.6.5, 21167.8, 21168.9 as added or amended by Statutes 1970, Chapter 1433; Statutes
1972, Chapter 1154; Statutes 1975, Chapter 222; Statutes 1976, Chapter 1312; Statutes 1977,
Chapter 1200; Statutes 1983, Chapter 967; Statutes 1984, Chapter 571; Statutes 1985, Chapter
85; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 626; Statutes 1989, Chapter 659;
Statutes 1991, Chapter 905; Statutes 1991, Chapter 1183; Statutes 1991, Chapter 1212; Statutes
93, Chapter 375; Statutes 1993, Chapter 1130; Statutes 1993, Chapter 1131; Statutes 1994,
Chapter 1230; Statutes 1994, Chapter 1294; Statutes 1995, Chapter 801; Statutes 1996, Chapter
444; Statutes 1996, Chapter 547; Statutes 1997, Chapter 415; Statutes 2000, Chapter 738;
Statutes 2001, Chapter 867; Statutes 2002, Chapter 1052; Statutes 2002, Chapter 1121
California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by
Register 77, Nos. 01 & 45; Register 83, No. 18; Register 91, No. 23; Register 93, No. 46;
and, Register 2000, No. 44

California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15022, 15025,
15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064, 15064.5, 15064.5,
15064.7, 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084,
15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095,
15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129,
15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162,
15164, 15165, 15167, 15168, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203,
15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register
75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05;
Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97,
No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30

California State Clearinghouse Handbook,
Governor's Office of Planning and Research (January 2000)

Test Claim Filed: September 26, 2003

Statement of Decision Adopted: September 30, 2010

This test claim addresses the activities required of school districts, county offices of education and community college districts pursuant to the California Environmental Quality Act (CEQA) and related statutes and regulations.

The Commission denied this test claim. The Commission found 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 because:

1. The California State Clearinghouse Handbook is not an executive order subject to Article XIII B, Section 6.
2. Reimbursement is not required for any activities imposed by Public Resources Code sections 21082, 21083, 21100, 21102, 21150, 21151, 21152, 21153, 21154, 21165, 21166,

or 21167 as added or amended by Statutes 1970, chapter 1433; and, Statutes 1972, chapter 1154 since these statutes were enacted prior to January 1, 1975.

3. Public Resources Code Section 21082, as amended by Statutes 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29 do require school districts and community college districts to perform activities but do not impose a new program or higher level of service on school districts and community college districts because:
 - a. The Public Resources Code Section 21082 requirement for school districts and community college districts to adopt objectives, criteria and procedures, consistent with CEQA and the CEQA regulations, for the preparation of negative declarations by ordinance, resolution, rule or regulation, added in 1976, was a clarification of existing law regarding “evaluation of projects,” and therefore does not impose a new program or higher level of service.
 - b. The requirement to adopt objectives, criteria and procedures, for the evaluation of projects and the preparation of environmental documents pursuant to CEQA was required by the law as it existed immediately prior to the date that California Code of Regulations, title 14, section 15022 was adopted and has been continuously required by the Public Resources Code Section 21082 since January 1, 1973, and therefore does not impose a new program or higher level of service.
4. The remaining statutes and regulations pled, which generally require compliance with the CEQA process, do not mandate school districts or community college districts to perform any activities because:
 - a. The plain language of Public Resources Code section 21083 imposes requirements on the Office of Planning and Research and the Secretary of the Resources Agency, not school districts or community college districts.
 - b. Although school districts and community college districts are required to undertake maintenance projects, including emergency repair projects, CEQA contains specific exemptions for maintenance projects and emergency projects.
 - c. For all other school district and community college district projects, CEQA is triggered by the district’s voluntary decision to undertake a project or accept state funding for a project.