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**REPORT TO THE  
LEGISLATURE:  
DENIED MANDATE CLAIMS**

**January 1, 2024 –  
December 31, 2024**

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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.<sup>1</sup>

This report includes a summary of two test claims that the Commission denied during the period from January 1, 2024, through December 31, 2024. The complete text of the decisions for the denied claims may be found on the Commission's website at <https://www.csm.ca.gov/report-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 1187.11.

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<sup>1</sup> Government Code section 17601.

## SUMMARY OF DENIED CLAIMS

### ***Criminal Procedure: Resentencing, 22-TC-03***

Penal Code Section 1170.03, as Added by Statutes 2021, Chapter 719,  
Section 3.1 (AB 1540)<sup>2</sup>

County of Los Angeles, Claimant

Test Claim Filed: December 16, 2022

Decision Adopted: January 26, 2024

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Penal Code section 1170.03, as added by the test claim statute, Statutes 2021, chapter 719, establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. Upon receipt of a resentencing recommendation, the court is required to provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel for the defendant.<sup>3</sup> The court may not deny a resentencing recommendation or reject a stipulation by the parties to recall and resentence a defendant “without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection.”<sup>4</sup> The test claim statute provides a presumption in favor of recalling and resentencing the defendant upon receipt of the recommendation, which may only be overcome if the court finds the defendant is an unreasonable risk of danger to public safety.<sup>5</sup> If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resented “in the same manner as if they had not previously been sentenced,” and provided the new sentence, if any, is no greater than the initial sentence.<sup>6</sup> In recalling and resentencing the defendant, the court is required to apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion to eliminate disparity of sentences.<sup>7</sup> The court may also reduce a defendant’s term of imprisonment by modifying the sentence, or vacating the conviction and impose judgment on lesser included offenses with the concurrence of the parties.<sup>8</sup> The court may consider post-conviction factors that support a finding “that continued incarceration is no longer in the interest of justice;” whether the defendant has experienced psychological, physical, or childhood trauma; or “if the defendant was a

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<sup>2</sup> Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute’s contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

<sup>3</sup> Penal Code section 1170.03(b)(1).

<sup>4</sup> Penal Code section 1170.03(a)(8).

<sup>5</sup> Penal Code section 1170.03(b)(2).

<sup>6</sup> Penal Code section 1170.03(a)(1).

<sup>7</sup> Penal Code section 1170.03(a)(2).

<sup>8</sup> Penal Code section 1170.03(a)(3).

youth ... at the time of the commission of the crime.”<sup>9</sup> In addition, if the defendant’s original sentence is recalled and the defendant is resentenced, “[c]redit shall be given for time served.”<sup>10</sup>

Under prior law, there were no procedural requirements for if and how a court would respond to a resentencing recommendation, and many courts issued notices rejecting the resentencing recommendation without a hearing or an opportunity for the defendant to be heard.<sup>11</sup>

The claimant contends that the test claim statute imposes new requirements on county district attorneys and public defenders to participate in the hearing procedures established by the state, and the Senate Appropriations Committee acknowledged that the statute would create “unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests.”<sup>12</sup>

The Commission finds that county district attorneys and public defenders are required to participate in the hearings required by the test claim statute. However, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g) and, therefore, does not impose any costs mandated by the state. As a direct result of the test claim statute, all defendants who receive a resentencing recommendation will be appointed counsel and have an opportunity at a hearing to present arguments in favor of the court recalling the original sentence and resentencing the defendant to a new sentence that accounts for time already served and any changes in law that reduce the original sentence. In *County of San Diego v. Commission on State Mandates*, which addressed the Commission’s Decision in *Youth Offender Parole Hearings (YOPH)*, the court found that the test claim statute changed the penalty for a crime pursuant to Government Code section 17556(g) “by changing the manner in which the original sentences operate and guaranteeing youth offenders the chance to obtain release on parole.”<sup>13</sup> The same is true here. By guaranteeing all defendants who receive a recommendation for resentencing a court hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute changes the penalties for the crimes committed by these defendants.<sup>14</sup>

Accordingly, the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and this Test Claim is denied.

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<sup>9</sup> Penal Code section 1170.03(a)(4).

<sup>10</sup> Penal Code section 1170.03(a)(5).

<sup>11</sup> Exhibit E (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

<sup>12</sup> Exhibit E (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

<sup>13</sup> *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

<sup>14</sup> *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

## **Heating, Ventilation, and Air Conditioning (HVAC) Program, 23-TC-01**

Education Code Sections 17660, 17661;  
Statutes 2022, Chapter 777, Sections 1 and 2 (AB 2232), Effective January 1, 2023

Hesperia Unified School District, Claimant

Test Claim Filed: November 17, 2023

Decision Adopted: November 22, 2024

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The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”<sup>15</sup> To do this, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined to include school districts and county offices of education) to:<sup>16</sup>

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC [defined as heating, ventilation, and air conditioning] systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.<sup>17</sup>

Part 6 of the title 24 regulations refers to the Energy Code adopted by the California Energy Commission.<sup>18</sup> Part 6 contains energy conservation standards applicable to nonresidential government buildings throughout California with HVAC systems, including schools and community colleges.<sup>19</sup> Table 120.1-A of the Energy Code governs the “Minimum Ventilation Rates” for HVAC systems in various types of classrooms and science labs and art rooms. Table 120.1-A identifies standards for the

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<sup>15</sup> Education Code section 17660 (Stats 2022, ch. 777).

<sup>16</sup> Statutory references are to the Education Code unless otherwise indicated.

<sup>17</sup> Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

<sup>18</sup> [Health and Safety Code section 18942\(a\)](#).

<sup>19</sup> California Code of Regulations, title 24, part 6, section 100(a). Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%206%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges> (accessed September 25, 2024), page 2. Public Resources Code section 25488.

total outdoor air rate, the minimum ventilation rates for systems with DCV (demand control ventilation) devices, and the air class, which is a measure of air quality.<sup>20</sup>

If a school's existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of the Energy Code, then the school district is required to:

[E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued . . . [and];

[D]ocument the HVAC system's inability to meet the current ventilation standards set forth in paragraph (1) [i.e., in the current version of Table 120.1-A of Part 6 of Title 24] in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.<sup>21</sup>

A covered school is also required to:

[I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.

If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.<sup>22</sup>

The test claim was timely filed on November 17, 2023.<sup>23</sup> This filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,<sup>24</sup> but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

The Commission finds sections 17660 (the Legislature's findings and declarations) and 17661(a), (d), and (e), as well as uncodified section 1 of the test claim statute, impose no requirements on school districts so they do not constitute a state-mandated program.

The Commission further finds section 17661(b) does not impose a reimbursable state-mandated program because:

- The requirement in section 17661(b)(2), requiring a school to inspect to "[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time*

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<sup>20</sup> California Code of Regulations, title 24, part 6, Table 120.1-A.

<sup>21</sup> Education Code section 17661(b)(2) (Stats 2022, ch. 777).

<sup>22</sup> Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b).)

<sup>23</sup> Exhibit A, Test Claim, filed November 17, 2023, page 1.

<sup>24</sup> Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

*the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service. Since 1987, section 5142(b) of the title 8 regulations has required employers, including school districts, to conduct annual workplace HVAC inspections to ensure compliance with the minimum ventilation rate requirements in effect when the installation permit was issued, with inspections and maintenance documented in writing.<sup>25</sup>

- The requirements in section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of the title 8 regulations, are *not* new and do not impose a new program or higher level of service for school districts that received a permit for HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved on or after January 1, 2020).

Under existing law, schools were already required to conduct annual inspections to ensure the HVAC systems provide “at least the quantity of outdoor air required by . . . Title 24, . . . in effect at the time the building permit was issued” and to document that inspection in writing.<sup>26</sup> Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new.<sup>27</sup>

- The requirements in section 17661(b)(1) and (2) to ensure compliance with *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the HVAC system’s inability to meet the *current* ventilation standards in the annual HVAC inspection report required by section 5142 of the title 8 regulations is new for schools that received a permit for an HVAC installation under the 2016 or earlier Energy Code (i.e., *before* January 1, 2020).<sup>28</sup> However, the claimant has not requested reimbursement to comply with section 17661(b)(1) and (2) and there is no evidence in the record

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<sup>25</sup> California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .” See also, the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, which require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems. (Ed. Code §§ 17002(d)(1)(B), 17014(c), 17075(a), 17070.77(a)-(b); Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).

<sup>26</sup> California Code of Regulations, title 8, section 5142. Emphasis added.

<sup>27</sup> California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

<sup>28</sup> Exhibit F (4), California Energy Commission, 2016 Nonresidential Compliance Manual, Chapter 4, page 4-45; Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 101.



school districts incurred any costs mandated by the state to comply with these requirements.<sup>29</sup>

The Commission further finds reimbursement is not required to comply with section 17661(c), which requires school districts to install MERV 13 or the highest filtration the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system. The 2016 Energy Code did not require filters rated at MERV 13 or higher.<sup>30</sup> The 2019 amendment to the Energy Code (eff. Jan. 1, 2020) set the minimum requirement to MERV 13.<sup>31</sup> However, reimbursement under article XIII B, section 6 is not required because:

- The MERV 13 requirement is *not* new to the extent a school received a permit to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have MERV 13 or higher filters.<sup>32</sup> Prior law also required filters be replaced or cleaned regularly.<sup>33</sup>
- In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).<sup>34</sup> Under these circumstances, existing regulations required the school to comply with the same filtration requirement as the test claim statute.<sup>35</sup>
- Therefore, the MERV 13 requirement in section 17661(c) is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in the title 8 regulations.<sup>36</sup> Although the claimant alleges the test claim statute requires school districts to replace the MERV 13

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<sup>29</sup> Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

<sup>30</sup> Exhibit X (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

<sup>31</sup> Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

<sup>32</sup> California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

<sup>33</sup> California Code of Regulations, title 8, section 5143(d)(3) (Register 2003, No. 24).

<sup>34</sup> California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

<sup>35</sup> California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

<sup>36</sup> California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

filters more often than every three months,<sup>37</sup> section 17661(c) imposes a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the efficiency level.<sup>38</sup> On-going filter purchase and installation is not new.<sup>39</sup>

However, there is no evidence of increased costs mandated by the state to comply with the newly-mandated activity, as required by law.<sup>40</sup> The Test Claim does not acknowledge any prior requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead, the Test Claim alleges costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, to install MERV 13 filters in *all* of its schools' HVAC systems since January 1, 2023.<sup>41</sup>

The Declaration submitted with the Test Claim also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters.<sup>42</sup> This evidence shows the claimant has schools *not* subject to the newly-mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit to install a new HVAC system

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<sup>37</sup> Exhibit A, Test Claim, filed November 17, 2023, page 13.

<sup>38</sup> California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24).

<sup>39</sup> Even if purchasing and installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

<sup>40</sup> Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

<sup>41</sup> Exhibit A, Test Claim, filed November 17, 2023, pages 13, 14, 18-19 (Landon Declaration); Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration); Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

<sup>42</sup> Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have MERV 13 or higher filters.<sup>43</sup>

There is *no* evidence in the record of any increased costs mandated by the state to perform the one-time activity to install MERV 13 or higher filtration or install filtration that achieves the highest feasible MERV level without significantly reducing the lifespan or performance of the existing HVAC system, in schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations.<sup>44</sup> The Commission cannot make a finding of costs mandated by the state without evidence in the record.<sup>45</sup>

Accordingly, the Commission finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and denies this Test Claim.

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<sup>43</sup> California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

<sup>44</sup> California Code of Regulations, title 8, section 3205.1.

<sup>45</sup> Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).