



<i>For CSM Use Only</i>	
Filing Date:	RECEIVED June 29, 2022 <i>Commission on State Mandates</i>
TC #:	21-TC-03

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

Senate Bill 384: Sex Offenders: Registration: Criminal Offender Record Information Systems

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Arlene Barrera, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number

(213) 974-8302

Email Address

abarrera@auditor.lacounty.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#))

Name and Title of Claimant Representative:

Fernando Lemus, Principal Accountant-Auditor

Organization: County of Los Angeles, Department of the Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number

(213) 974-0324

Email Address

flemus@auditor.lacounty.gov

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it (refer to completed WORKSHEET on page 5):

Senate Bill No. 384 (201 7-2018 Reg. Sess.)

Penal Code Section 290.5

Statutes of 2017, Chapter 541, Section 12, effective January 1,2018, operative July 1,2021: Sex Offenders: Registration: Criminal Offender Record Information Systems

- Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 29 / 2022
- A: Which is not later than 12 months (365 days) following [insert effective date] ___ / ___ / ____, the effective date of the statute(s) or executive order(s) pled; or
- B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 07 / 01 / 2021, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5.](#))

Section 5 – Written Narrative:

- Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564.](#))
- Includes all of the following elements for each statute or executive order alleged **pursuant to [Government Code section 17553\(b\)\(1\)](#) (refer to completed WORKSHEET on page 5):**
- Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;
- Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- Identifies *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;
- Contains 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;

Following FY: 2022 - 2023 Total Costs: \$ 4,506,187

Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: No dedicated funding source. (General funds to cover costs are used.)

Other nonlocal agency funds: None

Fee authority to offset costs: None

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

None

Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order:

None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to [Government Code Section 17553\(b\)\(2\)](#) and [California Code of Regulations, title 2, section 1187.5](#), as follows (refer to your completed WORKSHEET on page 5 of this form):

Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

Declarations identifying 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.

Declarations describing 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).

If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).

The declarations 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.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to [Government Code section 17553\(b\)\(3\)](#) and [California Code of Regulations, title 2, § 1187.5](#) (refer to your completed WORKSHEET on page 5 of this form):

The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages 34 to 62.

Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 155 to 167.

- 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.) Pages 63 to 154.
- Evidence to support any written representation of fact. *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 objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5).* Pages 10 to 33.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission’s regulations, and not by the representative.

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 is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission’s regulations. ([Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.](#))

Arlene Barrera

Name of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Auditor-Controller

Print or Type Title

Arlene Barrera
Arlene Barrera (Nov 3, 2022 17:24 PDT)

Signature of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

11/03/2022

Date

Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Senate Bill 384 (2017-2018 Regular Session), Statutes of 2017, Chapter 541, Section 12, effective January 1, 2018, operative July 1, 2021

Activity: Senate Bill 384 (2017-2018 Regular Session), Statutes of 2017, Chapter 541, Section 12, effective January 1, 2018, operative July 1, 2021

Establishes procedures for termination from the sex registry for a registered sex offender who is a Tier One or Tier Two offender and who completes his or her mandated minimum registration period under specified conditions

Initial FY: 2021 - 2022 Cost: \$ 316,299 Following FY: 2022 - 2023 Cost: \$ 610,693

Evidence (if required): Declarations of Bradley McCartt, Daniel Stanley, Tony Sereno, Debra Werbel, and Sung Lee

All dedicated funding sources; State: \$0 Federal: \$0

Local agency's general purpose funds: \$0

Other nonlocal agency funds: \$0

Fee authority to offset costs: \$0

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Activity: _____

Initial FY: _____ - _____ Cost: _____ Following FY: _____ - _____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Activity: _____

Initial FY: _____ - _____ Cost: _____ Following FY: _____ - _____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

INSTRUCTIONS

- **Statute of limitations for filing test claims and test claim amendments.** Local governments may file test claims with the Commission, which shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later. ([Gov. Code §§ 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(c\)](#), emphasis added.) If the test claim is filed based on the date of first incurring increased costs, evidence of the date of first incurring costs, which would be admissible over an objection in a civil proceeding, must be filed with the test claim or test claim amendment. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1187.5.](#)) Test claim amendments that add a statute or executive order to an existing test claim shall also be filed within this statute of limitations. ([Cal. Code Regs., tit. 2, §§ 1183.1\(c\).](#))

The statute of limitations for filing a test claim may be tolled when local government and the Department of Finance initiate a joint request for a legislatively determined mandate pursuant to Government Code sections 17573 and 17574. ([See Gov. Code, §§ 17573\(b\), 17574\(c\).](#)) A test claim filed on the same statute or executive order as a legislatively determined mandate pursuant to Government Code section [17574\(c\)](#) shall be filed within six months of the date an event described Government Code section [17574\(c\)\(1\)](#) occurs.

Failure to timely file a test claim will result in the dismissal of the test claim for lack of jurisdiction. ([Gov. Code, § 17551\(c\)](#); [Cal. Code Regs., tit. 2, § 1183.1\(f\),\(g\).](#))

- Complete sections 1 through 8 of the Test Claim Form, including the Worksheet for Sections 4-7, as indicated and note that the first page of the test claim form is the first page of the filing. Do not attach a cover letter, but include all background and arguments in Section 5. Written Narrative. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to [Government Code section 17553](#) and [California Code of Regulations, title 2, section 1183.1](#), the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft proposed decision is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired. ([Gov. Code, § 17557\(e\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\), 1183.6.](#))*
- Please file the entire test claim, including the Worksheet for Sections 4-7, consistent with the Commission’s regulations ([Cal. Code Regs., tit.2, § 1181.3](#)) by either of the following methods:

E-filing. All new test claim filings and supporting written materials shall be filed via the Commission’s e-filing system, available on the Commission’s website (<http://www.csm.ca.gov>). Documents e-filed with the Commission shall be in a legible and searchable format using a “true PDF” (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary. Test claims shall be filed on this form prescribed by the Commission and shall be digitally signed by the claimant, using the digital signature technology and authentication process contained herein. The completed test claim form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with section 1181.3(c)(1). The filer is responsible for maintaining the signed original new filing or written

material for the duration of the test claim process, including any period of appeal (this may be an electronic document, depending on how the filer creates and maintains its records). ***No additional copies are required when e-filing the request.***

Hard Copy Filing Cases of Undue Hardship or Significant Prejudice. If e-filing legible and searchable PDF documents, as described in section 1181.3(c)(1) of the Commission’s regulations, would cause the filer undue hardship or significant prejudice, the filer may submit a written request to the executive director to file in hard copy and may file the request by first class mail, overnight delivery, or personal service. Only upon prior approval by the executive director of a written request for a significant hardship or prejudice exception to the e-filing requirement, may a filing be made via hard copy.

Within 10 days of the filing of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may then be accepted on the same statute or executive order alleged to impose a mandate. ([Cal. Code Regs., tit.2, § 1183.1.](#))

You may download this form from our website at www.csm.ca.gov. If you have questions, please contact us: Email: csminfo@csm.ca.gov; Telephone: (916) 323-3562; or Website: www.csm.ca.gov












CSM Test Claim Form

Final Audit Report

2022-11-04


Created:	2022-11-03
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAkAcWUAQniP4hpcyhFx-cD7R3SGGtla1

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-  Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
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-  Signer ewu@auditor.lacounty.gov entered name at signing as Elaine Wu
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-  Form filled by Elaine Wu (ewu@auditor.lacounty.gov)
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-  Document emailed to Arlene Barrera (abarrera@auditor.lacounty.gov) for signature
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-  Email viewed by Arlene Barrera (abarrera@auditor.lacounty.gov)
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 Document e-signed by Arlene Barrera (abarrera@auditor.lacounty.gov)

Signature Date: 2022-11-04 - 0:24:04 AM GMT - Time Source: server

 Agreement completed.

2022-11-04 - 0:24:04 AM GMT

COUNTY OF LOS ANGELES TEST CLAIM

**SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL
OFFENDER RECORD INFORMATION SYSTEMS**

**Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration:
Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and
4852.03**

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COUNTY OF LOS ANGELES TEST CLAIM

**SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL
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4852.03**

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SECTION 5: WRITTEN NARRATIVE

COUNTY OF LOS ANGELES TEST CLAIM

**SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL
OFFENDER RECORD INFORMATION SYSTEMS**

**(Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration:
Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and
4852.03)**

SECTION 5: WRITTEN NARRATIVE
COUNTY OF LOS ANGELES TEST CLAIM
Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration: Criminal
Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and
4852.03

I. STATEMENT OF THE TEST CLAIM

Senate Bill (SB) 384 amended section 290 of the California Penal Code (PC), known as the Sex Offender Registration Act. Prior to the passage of SB 384, individuals convicted of certain sex offenses were required to register as a sex offender for the rest of their lives, irrespective of the severity of the crime. SB 384 takes into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law. The purpose of SB 384 is to restore the effectiveness of the registry by removing the number of registrants that research has shown are now low risk of reoffending. This, in turn, would enhance law enforcement's ability to differentiate between higher- and lower-risk offenders.

SB 384 states that, commencing on July 1, 2021, California must transition from a lifetime-based sex offender registration to a tier-based system. Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking to register with local law enforcement agencies (LEA) while residing in the State or while attending school or working in the State. SB 384 established three tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses, and five years and 10 years for Tiers One and Two, respectively, for an adjudication as a ward of the juvenile court for specified sex offenses, as specified.

SB 384 establishes procedures for termination from the sex offender registry for a registered sex offender who is a Tier One or Tier Two offender and who completes his or her mandated minimum registration period under specified conditions. SB 384 requires the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney (DA) to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. SB 384 establishes procedures for a person required to register as a Tier Three offender based solely on his or her risk level to petition the court for termination from the registry after 20 years from release of custody, if certain criteria are met.

A. DESCRIPTION OF THE NEW MANDATED ACTIVITIES

SB 384 added PC section 290.5, which became effective on July 1, 2021, and creates a new post-conviction process for registered sex offenders and newly-created activities for LEAs, the DA's office, and the Public Defender's office (PD). PC § 290.5(a)(1) permits

registrants to petition the superior court or juvenile court in their county of residence for termination of their requirement to register as a sex offender in California on or after July 1, 2021. The registrant must serve the petition on the registering LEA, the LEA in the county of conviction, and the respective DA's office. PC § 290.5 mandates that LEA personnel thoroughly review each petition to ascertain if the individual is eligible for termination from the registry if they meet certain conditions.

The California Department of Justice (DOJ) website refers individuals to contact their local PD's office or a private attorney for information on how to file a petition under PC § 290.5.¹ In order to comply with the requirements in PC § 290.5(a)(2) to file and serve the petition on LEAs and DA offices, the PD performs the following new activities: gather records, conduct necessary research, assess the petitioner's eligibility, and prepare and file the petition. The PD's office must comply with PC § 290.5(a)(2) and serve copies of the petition on the superior or juvenile court, the registering agency, and the DA's office.

The activities listed in PC § 290.5(a)(2) are newly mandated activities for the PD. Once a PD client is sentenced, the PD's duties cease with respect to that client except in limited circumstances.² For these limited circumstances, the PD has a Post-Conviction Unit responsible for handling post-conviction matters, including PC § 290.5 petition matters. This unit has completed a two-hour training on how to handle PC § 290.5 cases and has received instruction on how to time code their work so that costs could be calculated accordingly.^{3,4} Standard petition requests may require a few hours; however, petitions involving out-of-state sex offenses with statutes that do not necessarily correspond to the CA Penal Code require additional time and research.⁵ Once it is decided that a petition is warranted, a deputy PD completes and signs the necessary forms. If the DA requests a hearing on a petition pursuant to PC § 290.5(a)(3), the PD would engage the assistance of its paralegals, social workers, investigators, and expert witnesses in preparation for the hearing.

PC § 290.5(a)(2) creates newly mandated activities for LEAs. PC § 290.5(a)(2) requires that the registering LEA and the LEA of the county of conviction of a registrable offense shall, within 60 days of receipt of the petition, report to the DA and the superior court or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination from the registry. As a result of this mandate, Los Angeles Sheriff Department (LASD) personnel must thoroughly review each petition, which includes conducting local and national records checks to identify criminal convictions, post-conviction time spent in custody, and calculate convictions and time served pursuant to PC § 290.⁶ This process may not be automated and may require numerous steps to

¹ Declaration of Debra Werbel - Attachment A.

² The Sexually Violent Predator Act added Welfare and Institutions Code § 6601, which has been deemed a mandate, requires the public defender to represent previously convicted persons in civil commitment hearings.

³ Declaration of Debra Werbel

⁴ Declaration of Debra Werbel

⁵ Declaration of Daniel Stanley

⁶ Declaration of Daniel Stanley

coordinate, including phone calls, regular U.S. mail, and fax. This process can take between one to two hours depending on the complexity of the petitioner's criminal history, with out-of-state convictions taking considerably longer.⁷ Each LASD detective and/or law enforcement technician tasked with overseeing registered sex offenders was required to attend two State of California SB 384 information sessions. Each session was approximately 3 ½ hours long.⁸

PC § 290.5(a)(2) creates newly mandated activities for the DA's office. PC § 290.5(a)(2) requires that the petition shall be served on the DA where the petition is filed and on the DA of the county of conviction of the registrable offense. In preparation for the launch of the PC § 290.5 program, the DA's office created a system accommodation in their Prosecutorial Information Management System (PIMS) in order to handle petitions. Additionally, the DA created an Excel spreadsheet and a shared drive capable of tracking petitions.⁹ Further, the petition and all accompanying documents must be scanned and entered into PIMS.

PC § 290.5(a)(2) states that the DA in the county where the petition is filed may, within 60 days of receipt of the report from either the registering LEA, the LEA of the county of conviction of a registerable offense if different than the county where the petition is filed, or the DA of the county of conviction of a registerable offense, request a hearing on the petition if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration.¹⁰ In order to comply with this mandate, the DA must retrieve court records (local and out of county) and review case documents and risk assessment tools to determine whether the petitioner is eligible and appropriate for removal from the registry in relation to public safety. The DA must submit a California Judicial Council Form to the court and defense counsel.¹¹

The court may grant a PC § 290.5 petition unless the DA's office requests a hearing. PC § 290.5(3) states that if the DA requests a hearing, the DA shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration.¹² At the hearing, a judge can consider the following factors: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of offense; criminal and non-criminal behavior before and after the conviction for the registerable offense; the time period during which the person has not reoffended; successful treatment of a sex offender treatment program and the person's risk of sexual or violent re-offense, including risk

⁷ Declaration of Daniel Stanley

⁸ Penal Code § 290.5(a)(2); Declaration of Daniel Stanley

⁹ Declaration of Bradley McCartt

¹⁰ Declaration of Bradley McCartt

¹¹ Declaration of Bradley McCartt

¹² Penal Code § 290.5(a)(3); Declaration of Bradley McCartt

levels based on risk assessment tools; or any other evidence submitted by the parties, which is reliable, material and relevant.¹³

PC § 290.5(a)(3) states that any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties, which is reliable, material, and relevant. As a result of this new hearing process, the DA and PD must collect affidavits, declarations, police reports, and any other relevant evidence for consideration by the court. A petitioner must be represented at this hearing by an attorney who understands the law, court process, and rules of evidence.¹⁴

B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE

SB 384 created a process by which sex offender registrants can petition to have themselves removed from the sex offender list. In enacting PC § 290.5(a)(2), the County of Los Angeles (County or Claimant) is now responsible for receiving up to 1,859 petitions and reporting the receipt of petitions to the DOJ. Also, if an offense that may require registration is identified, which had not previously been assessed by the DOJ, Claimant must refer that conviction to the DOJ for assessment and a determination of whether the conviction changes the tier designation assigned by the DOJ to the offender pursuant to PC § 290.5(a)(2). Claimant is required to report to the DA and the court if the DOJ requests an extension of time to complete the tier designation. Further, Claimant must report to the DA and the superior court as to whether the person has met the requirements of being terminated from the registry.¹⁵ Accordingly, Claimant has incurred costs associated with training and maintaining staff in order to receive, review, and report on petitions pursuant to PC § 290.5(a)(2).

The new PC § 290.5 petition process requires a court ruling, which necessitates the appearance of the DA and petitioner's counsel. Further, the DA may request a full evidentiary hearing pursuant to PC § 290.5(a)(3), which results in added duties on the part of the DA and PD in order to put forth their case and provide a defense at these hearings.¹⁶ Since PC § 290.5 is a new petition process, the DA and defense counsel are now required to engage in the aforementioned activities and, in turn, have incurred and will continue to incur increased costs.¹⁷

¹³ Penal Code § 290.5(a)(3); Declaration of Bradley McCartt; Declaration of Debra Werbel

¹⁴ Declaration of Debra Werbel

¹⁵ Declaration of Daniel Stanley

¹⁶ Declaration of Debra Werbel; Declaration of Bradley McCartt

¹⁷ Declaration of Debra Werbel; Declaration of Bradley McCartt

C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE

The LASD has incurred \$27,407 in costs associated with receiving and reviewing petitions under PC § 290.5(a)(2) in fiscal year (FY) 2021-2022.¹⁸ The DA has incurred costs of \$198,835 associated with its requirement to review and process petitions in FY 2021-2022.¹⁹ The PD has incurred \$90,057 in costs associated with training on PC § 290.5 and in filing petitions under PC § 290.5(a)(2) in FY 2021-2022.²⁰

D. 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 TEST CLAIM WAS FILED

The LASD estimates costs associated with reviewing and processing petitions under PC § 290.5(a)(2) at \$27,705 for FY 2022-23.²¹ The DA estimates costs associated with reviewing and processing petitions under PC § 290.5(a)(2) and preparing for evidentiary hearings under § 290(a)(3) at \$294,110 for FY 2022-23.²² The PD estimates costs associated with filing petitions under PC § 290.5(a)(2) and defending clients during evidentiary hearings under PC § 290.5(a)(3) at \$288,878 for FY 2022-23.²³

E. STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE

According to the California Sex and Arson Registry (CSAR) report dated May 25, 2022, there are 48,535 registrants statewide who are potentially eligible over the next 20 years to petition under SB 384. While exact costs are unknown, the Claimant reasonably estimates annual statewide costs to be \$4,506,187.²⁴

F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM

The Claimant is not aware of any State, federal, or non-local agency funds available for this program. All the increased cost was paid and will be paid from the Claimant's General Fund appropriations.²⁵

¹⁸ Declaration of Daniel Stanley

¹⁹ Declaration of Tony Sereno

²⁰ Declaration of Sung Lee

²¹ Declaration of Daniel Stanley

²² Declaration of Tony Sereno

²³ Declaration of Sung Lee

²⁴ 48,535 registrants multiplied by 1/20th multiplied by \$1,856.69 County cost per petition

²⁵ Declaration of Sung Lee; Declaration of Tony Sereno; Declaration of Daniel Stanley

G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES

The Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter.²⁶

H. IDENTIFICATION OF LEGISLATIVELY-DETERMINED MANDATES THAT ARE ON THE SAME STATUTE OR EXECUTIVE ORDER

The Claimant is not aware of any legislatively-determined mandates related to SB 384, Chapter 541 Statutes of 2017, pursuant to Government Code § 17573.

II. MANDATE MEETS BOTH SUPREME COURT TESTS

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase “new program or higher level of service”, language that was approved by the voters when they passed Proposition 4 in 1979, which added article XIII B to the California Constitution. In reaching its decision, the Court held that:

“ . . . the term ‘higher level of service’ . . . 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 government and do not apply generally to all residents and entities in the state²⁷.”

A program can either carry out the governmental function of providing services to the public or be a law that implements State policy that imposes unique requirements on the local government that does not apply to the entire State. Only one part of this definition has to apply in order for the mandate to qualify as a program. SB 384’s mandated activities meet both prongs.²⁸

²⁶ Declaration of Sung Lee

²⁷ *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46, 56

²⁸ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App. 3d 521, 537

III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT

The sections of the law alleged in this Test Claim (TC) are unique to the Claimant. The activities described in section A are provided by local government agencies.

IV. MANDATE CARRIES OUT STATE POLICY

The new State statute, the subject of this TC, imposes a higher level of service by requiring local agencies to provide the mandated activities described in section A.

V. STATE MANDATE LAW

Article XIII B § 6 requires the State to provide a subvention of funds to local government agencies any time the legislature or a state agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

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 governments for the cost of such program or increased level of service . . .

The purpose of § 6 “is to preclude the state from shifting financial responsibility for carrying our 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.”²⁹ The section was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.³⁰ In order to implement § 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.³¹ Under this scheme, the Legislature established the parameters regarding what constitutes a State-mandated cost, defining “costs mandated by the state” to include:

...any increased costs which a local agency 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 § 6 of Article XIII B of the California Constitution.³²

²⁹ *County of San Diego v. State of California* (1997) 15 Cal. 4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487

³⁰ *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976-985

³¹ Government Code § 17500, et seq.; *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 331, 333

³² Government Code § 17514

VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556, which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code § 17556. None of the seven disclaimers apply to this TC:

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a Federal law or regulation and resulted in costs mandated by the Federal government, unless the statute or executive order mandates costs which exceed the mandate in that Federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts, which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposes duties, which were expressly included in a ballot measure approved by the voters in Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.³³

None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement apply to this TC.

The enactment of SB 384 imposes new State-mandated activities and costs on the Claimant, and none of the exceptions in Government Code § 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the required activities. SB 384, therefore, represents a State mandate for which the Claimant is entitled to reimbursement pursuant to § 6 of the State Constitution.

³³ Government Code § 17514

VII. CONCLUSION

SB 384, Chapter 541, Statutes of 2017, imposes State-mandated activities and costs on the Claimant. Those State-mandated costs are not exempted from the subvention requirements of § 6 of the State Constitution. There are no funding sources, and the Claimant lacks authority to develop and impose fees to fund any of these new State-mandated activities. Therefore, Claimant respectfully requests that the Commission on State Mandates find that the mandated activities set forth in the TC are State mandates that require subvention under the California Constitution § 6.

SECTION 6: DECLARATIONS

COUNTY OF LOS ANGELES TEST CLAIM

**SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL
OFFENDER RECORD INFORMATION SYSTEMS**

DECLARATION OF BRADLEY L. MCCARTT

I, Bradley L. McCartt, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) District Attorney's (DA) Office and hold the title of Deputy-In-Charge. I am assigned to the District Attorney's Sex Crimes Division and am the supervisor of Stuart House, a child advocacy center. I am the District Attorney's expert on Sex Offender Registration and as part of my duties handle California Penal Code (PC) Section 290.5 Sex Offender Petitions for removal from California's Sex Offender Registry.
1. PC section 290, also known as the Sex Offender Registration Act, requires registration on specified sexual offenses. California has the oldest and largest sex offender registry in the United States and there are currently over 146,000 individuals in the registry. The California Department of Justice (DOJ) estimates that approximately 4,000 registrants would be eligible to petition for termination from the registry in Los Angeles County retroactively. (See Attachment A) This number does not include the new registrants who will be eligible each year moving forward in perpetuity.
2. Prior to the passing of SB 384, which added PC section 290.5, all registerable sex crimes offenses required lifetime registration. SB 384 states that, commencing on January 1, 2021, California must transition from a lifetime-based sex offender registration system to a tier-based system. Commencing on January 1, 2021, SB 384 established three tiers of registration for adult sex offenders based on specified criteria for periods of 10 years, 20 years, and life, thus completely reforming PC 290 et. seq. Therefore, California had to transition from lifetime registration to tiered registration by the change in the penal code made by SB 384. Juvenile offenders are required to register as a sex offender for a minimum of either five years or 10 years, as specified. To implement and maintain the new tier-based sex offender registry requires a significant effort that impacts registering agencies, courts, and district attorneys.
3. PC section 290.5(a)(1) permits registrants who meet certain requirements to petition the superior court or juvenile court, in their county of residence, for termination of their requirement to register as a sex offender in California.
4. PC section 290.5(a)(2) states that the petition shall be served on the district attorney in the county where the petition is filed and on the district attorney of the county of conviction of a registrable offense if different than the county where the petition is filed.
5. The County DA's Office began incurring costs for this mandated program on July 1, 2021.

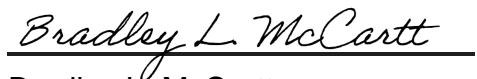
6. PC section 290.5(a)(2) requires the DA's Office to review the petition and case documents to determine if a hearing to oppose the petition will be requested. Further, the handling district attorney has 60 days from receipt of the California Sex and Arson Registry (CSAR) worksheet to complete this review and to complete and submit a California Judicial Council Form (CR-417) (California Rule of Courts 1.31 Use of Mandatory Forms) to the court and defense counsel. (PC 290.5(a)(2)). In order to comply with PC section 290.5(a)(2), the district attorney must do the following:
 - a. Upon receipt of the petition, a DA employee and a Legal Office Support Assistant (LOSA) or Paralegal must timestamp and document receipt of the petition.
 - b. The petition must be logged into an Excel spreadsheet for tracking and assignment to a Deputy District Attorney.
 - c. The petition and all accompanying documents must be scanned and entered/uploaded into the Prosecutor Information Management System (PIMS) case management system.
 - d. The handling Deputy District Attorney must retrieve court records (local and out of county) and review case documents, as well as risk assessment tools (Static 99-R), to determine whether the petitioner is eligible and appropriate for removal from the registry in relation to public safety.
7. PC section 290.5(a)(3) requires that an official court ruling be made on the record. This results in the Deputy District Attorney either appearing for the petition to be granted or conducting a full public safety hearing.
8. If the district attorney requests a hearing, PC section 290.5(a)(3) states that the DA may present evidence regarding whether community safety would be significantly enhanced by requiring continued registration.
9. The district attorney must prepare for hearing since PC 290.5(a)(3) requires that the court "shall consider" the following: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or violent re-offense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties, which is reliable,

material, and relevant.

10. In preparation for the implementation of SB 384's mandated activities, the DA's Office created systems accommodations necessary for the handling of petitions in the PIMS case management system. All DA offices in the state of California use a case management system for handling criminal cases. In Los Angeles County, all court activity, including the receipt of petitions and the calendaring of court appearances, is done using the Trial Courts Information System (TCIS). This communicates with PIMS and is the method by which DA personnel are made aware of court appearances, court actions, uploaded documents, and deputy DA assignments.
 - a. Systems personnel and I had to author a guide "Get Going with SB 384 in PIMS" for Deputy District Attorney and support staff use.
 - b. In preparation for the implementation of SB 384's mandated activities, DA personnel had to create an Excel spreadsheet and shared drive capable of tracking petitions. This was required because PC 290.5 lays out a timeline requirement for District Attorney responsibilities. Therefore, each of these responsibilities must be tracked. This includes tracking the date of receipt of the petition, responding to the court within 60 days of law enforcement's completion of a CSAR eligibility worksheet, and filing of mandated Judicial Council Forms.
11. I have conducted five 90-minute trainings for DA personnel in preparation for the processing of forms and courtroom litigation of petitions as described above. This included instructing on mandatory timelines, rules of service as established by PC 290.5, explanation of all relevant evidence as listed in PC 290.5 when litigating a petition opposition, how to read a law enforcement CSAR form, the required rulings which must be made by the courts on the record, and how to handle petitions which were illegally filed.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, CA


Bradley L. McCartt
Deputy-In-Charge, Sex Crimes Division
District Attorney's Office
County of Los Angeles

CSAR REGISTRANT NUMBERS AS OF MAY 7, 2021

(figures do not include incarcerated, out-of-state or deported registrants)

COUNTY	ADULT REGISTRANTS	JUVENILE REGISTRANTS	TOTAL PER COUNTY
ALAMEDA	2275	58	2333
ALPINE	6	1	7
AMADOR	103		103
BUTTE	797	19	816
CALAVERAS	123		123
COLUSA	50	1	51
CONTRA COSTA	1398	32	1430
DEL NORTE	155	6	161
EL DORADO	382	3	385
FRESNO	2501	103	2604
GLENN	81	2	83
HUMBOLDT	455	7	462
IMPERIAL	264	2	266
INYO	45	1	46
KERN	2133	58	2191
KINGS	393	22	415
LAKE	319	7	326
LASSEN	101	2	103
LOS ANGELES	14745	232	14977
MADERA	428	8	436
MARIN	154	2	156
MARIPOSA	74	2	76
MENDOCINO	255	4	259
MERCED	772	17	789
MODOC	58		58
MONO	20		20
MONTEREY	681	17	698
NAPA	186	3	189
NEVADA	190	4	194
ORANGE	2993	32	3025
PLACER	590	7	597
PLUMAS	61	1	62
RIVERSIDE	4351	67	4418
SACRAMENTO	4077	103	4180
SAN BENITO	139	2	141
SAN BERNARDINO	4823	61	4884
SAN DIEGO	4490	55	4545
SAN FRANCISCO	1075	17	1092
SAN JOAQUIN	1865	33	1898
SAN LUIS OBISPO	478	4	482
SAN MATEO	706	4	710

*As of 5/7/21

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COUNTY	ADULT REGISTRANTS	JUVENILE REGISTRANTS	TOTAL PER COUNTY
SANTA BARBARA	706	13	719
SANTA CLARA	3296	38	3334
SANTA CRUZ	402	3	405
SHASTA	813	16	829
SIERRA	10		10
SISKIYOU	219	2	221
SOLANO	980	27	1007
SONOMA	793	4	797
STANISLAUS	1370	31	1401
SUTTER	306	10	316
TEHAMA	347	8	355
TRINITY	69		69
TULARE	1172	46	1218
TUOLUMNE	166	6	172
VENTURA	1110	16	1126
YOLO	387	10	397
YUBA	357	12	369
TOTAL:	67295	1241	68536

Please note that the above figures were current at the time the report was created on May 7, 2021. Because registration events take place every day which may change registrant numbers in each county, these figures are intended only to serve as a snapshot. Your county's registrant figures may vary from day to day.

Approximately 22,300 registrants are incarcerated as of May 7, 2021.

The Department of Justice has previously estimated that approximately 30% of sex offender registrants in a jurisdiction may be eligible to petition for relief from registration pursuant to Penal Code section 290.5 on July 1, 2021. However, this figure does not consider tolling, pending charges, supervision status, custody status, risk assessment level or potential Tier 2 exception status, and is based solely on the individuals' registrable offense(s) and the dates of conviction(s) and/or adjudication(s) of their registrable offense(s).

Please also note that this figure does not account for the statutory requirement in Penal Code section 290.5(a)(1), as amended effective July 1, 2021, that individuals petition on or after their next birthday after July 1, 2021, following the expiration of the mandated minimum registration period, a requirement which previously existed for juvenile registrants and was recently added to statute for adult registrants as a result of Senate Bill 118.

Although a number of registrants may be eligible to petition for relief from registration on July 1, 2021, and throughout the following year, it is unknown how many registrants who meet eligibility requirements for petitioning will, in fact, file petitions. It is also unknown how many registrants who do not meet eligibility requirements for petitioning will nevertheless file petitions for relief from registration.

DECLARATION OF DANIEL STANLEY

I, Daniel Stanley, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

1. I am employed by the County of Los Angeles Sheriff's Department (LASD) and hold the title of Lieutenant in the department's Special Victims Bureau. I am responsible for oversight of the Sexual Assault Felony Enforcement (SAFE) team, which includes the overall management of those required to register as sex offenders at local LASD stations.
2. Senate Bill (SB) 384 added Penal Code (PC) section 290.5 and imposes requirements on LASD personnel charged with management of their local sex offender populations. Pursuant to PC section 290.5, all current and future registered sex offenders would be placed into a "three-tier" system. Those placed by the State in either Tier 1 or Tier 2 would be allowed to petition courts to be relieved from having to register as a sex offender, provided specific conditions had been met. PC section 290.5(a)(1) mandates that every registered sex offender meeting these new requirements serve a petition on the law enforcement agency (e.g., LASD Station) at which they register.
3. PC section 290.5(a)(2) mandates that a person serve their petition on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency of the county of conviction. The registering law enforcement agency and the law enforcement agency in the county of conviction of a registrable offense, if different than the county of where the petition is filed, shall, within 60 days of receipt of the petition, report to the district attorney and the superior court regarding whether the person has met the requirements for termination pursuant to PC section 290(e).
4. In order to comply with the mandate in PC section 290.5(a)(2), LASD personnel must thoroughly review each petition and complete the California Sex and Arson Registrant (CSAR) worksheet created by the California Department of Justice (DOJ) to ascertain if the individual is eligible. This process can take between one to two hours depending on the complexity of the petitioner's criminal history. Petitions that involve out-of-state convictions can take considerably longer to review and process. To thoroughly review petitions that involve out-of-state arrests and convictions, LASD personnel may need to reach out to law enforcement agencies, courts, and custodial facilities in those states to ascertain the type of criminal conviction and accurately calculate time served. This process may not be automated and may require numerous steps to coordinate, including phone calls, snail mail and fax.
5. There are approximately 54 LASD employees, both sworn and civilian,

responsible for registered sex offenders at LASD stations that must be trained in the SB 384 petition review process. Currently, the DOJ facilitates the four-hour introductory CSAR training sessions

6. The LASD began incurring costs July 1, 2021. For Fiscal Year (FY) 2021-2022, the LASD estimates costs associated with the implementation of SB 384 at \$27,407 consisting of 184 (92x2) hours of petition review at the Bonus I Deputy rate of \$148.95/hour.
7. Using the CSAR report dated May 25, 2022, the LASD estimates that there are 4,225 eligible registrants that may fall into either Tier 1 or Tier 2 in Los Angeles County and that would be required to register at one of 23 LASD stations. Of these 4,225 eligible registrants, LASD reasonably estimates that 44% (1,859) may be eligible to petition over the next 20 years. The LASD reasonably estimates that 1/20th of eligible petitioners may petition in FY 2022-23. At this time, the LASD estimates two (2) hours of work for each petition at the Bonus Deputy I hourly rate of \$148.95. The process of reviewing petitions includes conducting local and national records checks to identify criminal convictions, post-conviction time spent in custody, calculating convictions and time pursuant to PC section 290 (e), and completing the DOJ worksheet. This results in an estimated cost of approximately \$297.90 per petition. Based on these figures, the LASD estimates incurring costs of \$27,705 for FY 2022-23.
8. For the FY 2022-23 statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the LASD reasonably estimates that there are 48,535 eligible petitioners in the State. LASD estimates that 1/20th (2,427) of the 48,535 Tier 1 or Tier 2 sex offenders may petition each year. Using the aforementioned \$297.90 cost per petition, the LASD estimates an increased statewide cost of \$723,003 in FY 2022-23.
9. LASD has not received any local, State, or federal funding to offset the increased direct and indirect costs as a result of its compliance with PC section 290.5.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, CA.

Daniel Stanley

Daniel Stanley
Lieutenant, Special Victims Bureau
Los Angeles Sheriff's Department
County of Los Angeles

Declaration of Tony Sereno

I, Tony Sereno, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) District Attorney's (DA) Office and hold the title of Administrative Deputy, DA. I am responsible for oversight and management of the Bureau of Administrative Services, which includes the Budget and Fiscal Services Division, Property Management and Support Services Division, Human Resources Division, and Systems Division. My job responsibilities include the complete and timely recovery of costs related to services mandated by the State.
2. California Penal Code (PC) Section 290, The Sex Offender Registration Act, requires registration on specified sexual offenses. California has the oldest and largest sex offender registry in the United States with more than 146,000 individuals currently in the registry. Los Angeles County has more than 15,000 registered sex offenders.
3. Prior to the passing of Senate Bill (SB) 384, all registerable sex crimes offenses required lifetime registration. SB 384 mandated that California transition from a lifetime-based sex offender registration system to a tier-based system by January 1, 2021. This included the establishment of three registration tiers for adult sex offenders based on specified criteria for periods of 10 years, 20 years, and life. Juvenile offenders are required to register as a sex offender for a minimum of either five years or 10 years, as specified.
4. Pursuant to SB 384, on or after July 1, 2021, registrants that meet certain requirements may petition the superior court or juvenile court, in their county of residence, for termination of their requirement to register as a sex offender in California.
5. SB 384 requires the DA's Office to complete a review of a petition and case documents to determine if a hearing to oppose the petition will be requested. The DA's Office was also required to implement changes to its Prosecutorial Information Management System (PIMS) case management system to manage the new process mandated by SB 384.
6. SB 384 requires that an official court ruling be made on the record. This results in a Deputy DA either appearing for the petition to be granted or conducting a full public safety hearing. As a result, implementation of the tier-based sex offender registry imposes additional workload, training, and costs that impact the DA's Office.

7. The DA's Office has incurred \$198,835 in costs during Fiscal Year (FY) 2021-22 for additional work that is mandated by SB 384. Those costs are shown in the table below.

Expenditure	Hours	Cost
Upgrades to PIMS application	354	\$ 36, 693
07/01/2021 – 12/31/2021	1,117	\$ 96,092
01/01/2022 – 04/30/2022	754	\$ 66,050
Total		\$ 198,835

8. The DA's Office has not received any local, State, or federal funding to offset the increased direct and indirect costs associated with the processing of the petitions submitted on behalf of individuals subject to SB 384.
9. Using the California Sex and Arson Registry (CSAR) report dated May 25, 2022, the DA's Office estimates that there are 7,480 eligible petitioners in Los Angeles County. The DA reasonably estimates that these registrants may be eligible to petition over the next 20 years and that 1/20th of eligible petitioners (374) may petition in FY 2022-23. At this time, the DA's Office estimates 7.6 hours of work for each petition, comprised of 4.6 attorney hours and 3.0 legal support staff hours. The hourly rate for a Deputy District Attorney III is \$136.65 and the hourly rate for a Legal Office Support Assistant II is \$52.60. This results in an estimated cost of approximately \$786.39 per petition. Based on these figures, the DA's Office estimates incurring costs of \$294,110 for FY 2022-23.
10. For the statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the DA's Office reasonably estimates that there are 48,535 eligible petitioners in the State. The DA estimates that 1/20th (2,427) of the 48,535 Tier 1 or Tier 2 sex offenders may petition each year. Using the aforementioned \$786.39 cost per petition, the DA's Office estimates an increased statewide cost of \$1,908,569 in FY 2022-23.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 10th day of June 2022 in Los Angeles, California.

Tony Sereno
 Administrative Deputy, DA
 District Attorney's Office
 County of Los Angeles

DECLARATION OF DEBRA WERBEL

I, Debra Werbel, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

1. I am employed by the County of Los Angeles Office of the Public Defender (PD) and hold the title of Head Deputy. I am responsible for the oversight of the PD staff assigned to the Post-Conviction Unit. This Unit handles post-conviction matters, including handling cases involving Senate Bill (SB) 384, which added Penal Code section 290.5.
2. Prior to the passage of SB 384, individuals convicted of certain sex offenses were required to register as a sex offender for the rest of their lives irrespective of the severity of the crime. These individuals' information would be placed on the Megan's Law website, which is available to members of the public such as employers, landlords, neighbors, etc. The registry often contained many low-level offenders and offenders convicted decades ago who now present little to no community risk. The purpose of SB 384 is to greatly reduce the number of people on California's registry, thereby restoring its effectiveness as a law-enforcement tool by removing from the registry tens of thousands of registrants that research has shown are now at low risk of reoffending.
3. Under Penal Code section 290.5, all current and future registered sex offenders would be placed into a "three-tier" system.
 - a. Tier 1 - Registration for 10 years for misdemeanors or non-violent felonies.
 - b. Tier 2 - Registration for 20 years for serious or violent felonies.
 - c. Tier 3 - Registration for life for high-risk offenders, including, but not limited to, sexually violent offenders, repeat violent offenders, and sex offenses requiring life terms, except for offenders designated Tier 3 based only on a risk-level assessment, then registration for 20 years.
4. Under Penal Code section 290.5(a)(2), registrants shall file petitions with law enforcement agencies, as well as with the district attorney's (DA) office. Penal Code section 290.5(a)(1)(2) and (3) creates a post-conviction process whereby a Tier 1, Tier 2, and certain Tier 3 individuals may petition to be removed from the sex offender registry at the end of their designated registration period.
5. This removal process begins when a registrant contacts the PD's office, usually after receiving a California Department of Justice (DOJ) letter when registering at a police station. The DOJ website refers individuals to their local public defender's office or a private attorney for information on how to file a petition under Penal Code section 290.5. (see Attachment A at page 8)

6. Our department has assigned paralegals to conduct the initial intake process, which includes the initial interview and gathering of records. This process may take 4-6 hours. The case is then assigned to one of the lawyers in the Post-Conviction Unit, who will review the gathered records, conduct the necessary research, assess the person's eligibility, contact the petitioner, and then prepare a petition for filing if the petitioner is eligible. Simple cases may require a few hours; however, there may be complex issues involving out-of-state sex offenses with statutes that do not necessarily correspond to the CA Penal Code. There may also be a need to litigate in what Tier a person should be placed.
7. Once it is decided that a petition should be filed, an attorney from the PD completes and signs the necessary forms. A paralegal then serves copies of the petition on the court, the registering agency, and the Los Angeles County DA's Office in accordance with Penal Code section 290.5(a)(2). The law enforcement agency and the district attorney of the county of conviction of the registerable offense are also served if different from the county where the petition is filed.
8. Upon receipt of the petition, the registering agency (and the law enforcement agency of the county of conviction of the registerable offense, if different from the county where the petition is filed) would be required within 60 days to provide a report to the DA's Office and the superior court where the petition is filed regarding whether the person has met the requirements of termination in accordance with Penal Code section 290.5(a)(2).
9. The DA's Office may request a hearing under Penal Code section 290.5(a)(3) if the petitioner has either not met the requirements for termination or if community safety would be significantly enhanced by the person's continued registration. At the hearing, a judge can consider the following: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of offense; criminal and non-criminal behavior before and after the conviction for the registerable offense; the time period during which the person has not reoffended; successful treatment of a sex offender treatment program and the person's risk of sexual or violent re-offense, including risk levels based on risk assessment tools; or any other evidence submitted by the parties, which is reliable, material and relevant.
10. Since Penal Code section 290.5(a)(3) mandates that the district attorney shall be entitled to present evidence, a lawyer from the PD's Post-Conviction Unit is assigned to represent the petitioner at the hearing in order to afford the petitioner due process.
11. To prepare for the Penal Code section 290.5 hearing, a public defender must perform activities that include, but are not limited to, the following:
 - (a) Conduct several interviews with the client to gather information about the

presence of empirically supported protective factors in the client's lifestyle to demonstrate that the client is low-risk for re-offending;

- (b) Draft a defense motion with points and authorities and gather exhibits in support of the motion.
 - (c) Appoint a defense expert to conduct a risk assessment (when appropriate)
 - (d) Prepare to litigate standard of proof at the Penal Code section 290.5 hearing, since this is an unsettled area in the law.
 - (e) Follow up with the DOJ to verify that the client's name was removed from the sex offender registry, could take 1-3 months.
12. The legislatively created post-conviction process in Penal Code section 290.5 would violate due process if a lawyer were not provided in this legal, evidentiary, and adversarial proceeding. In order to properly represent someone at this hearing, our lawyer would require the assistance of paralegals, social workers, investigators and expert witnesses; they would investigate and present any other relevant evidence that may show that community safety would not be significantly enhanced by continued registration. A petitioner must be represented at this hearing by an attorney who understands the law, court process, and rules of evidence. The number of hours spent preparing and attending this hearing will vary depending on the complexity of the case.
13. The Post-Conviction Unit is comprised of one Deputy-In-Charge, 20 attorneys, 16 paralegals, and two secretarial assistants. Those working on Penal Code section 290.5 cases have completed a two-hour training on how to handle Penal Code section 290.5 cases and have been instructed to time code their work so that costs can be calculated.
14. All matters related to the mandate in Penal Code section 290.5 were handled by one lawyer in the PD's Office beginning on July 1, 2021, when individuals were first allowed to file their petitions. This attorney did not track the time he spent on Penal Code section 290.5 cases and costs cannot be calculated from July 2021 to January 2022. Beginning in February 2022, the Post-Conviction Unit was assigned to handle Penal Code section 290.5 matters and costs were subsequently tracked.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 7th day of September 2022 in Los Angeles, CA

A handwritten signature in black ink, appearing to read "Debra Werbel", written over a horizontal line.

Debra Werbel
Head Deputy, Post-Conviction Unit
Office of the Los Angeles County Public Defender



**CALIFORNIA DEPARTMENT OF JUSTICE
CALIFORNIA JUSTICE INFORMATION SERVICES
SEX OFFENDER REGISTRY**



Frequently Asked Questions

**California Tiered Sex Offender Registration (Senate Bill 384)
For Registrants**

The California Department of Justice (CA DOJ) Sex Offender Registry has developed the following frequently asked questions in reference to Senate Bill (SB) 384. The information provided below is general information and is not intended as legal advice.

NOTE: The CA DOJ cannot provide legal advice.

What is SB 384?

Effective January 1, 2021, SB 384 transitioned California's lifetime sex offender registration schema to a tier-based schema. SB 384 established three tiers of registration for adult registrants for periods of 10 years, 20 years, and life, and two tiers of registration for juvenile registrants for periods of 5 years and 10 years. SB 384 allows the registrant to petition the superior court or juvenile court for termination of their sex offender registration requirement on or after their next birthday after July 1, 2021, following the expiration of their mandated minimum registration period. Based on criteria listed in SB 384, the court will either grant or deny the petition.

IMPORTANT DATES

Beginning on January 1, 2021, the CA DOJ designates tiers for registrants.

Beginning on July 1, 2021, on or after their next birthday after July 1, 2021, registrants who meet the mandated minimum requirements may petition for termination of their sex offender registration requirement in the superior court or juvenile court in the county in which they reside.

Beginning on January 1, 2022, registrants will be displayed on the Megan's Law website pursuant to Penal Code section 290.46 as amended under SB 384.

When did SB 384 take effect?

The tier-based sex offender registration schema took effect on January 1, 2021.

Pursuant to Penal Code section 290.5(a)(1) as amended under SB 118 and SB 384, tier one, tier two, and "Tier Three – Risk Assessment Level" registrants may file a petition in the superior court or juvenile court in their county of residence for termination of their California sex offender registration requirement. Registrants may petition the court following the expiration of their mandated minimum registration period on or after their next

birthday after July 1, 2021. Beginning January 1, 2022, the CA DOJ will make information available to the public via the Megan’s Law website in accordance with SB 384.

The previous lifetime sex offender registration schema ended December 31, 2020.

Tiering

How are the tiers determined?

Tiers are designated in accordance with the criteria specified in Penal Code sections 290 through 290.024, et seq., the Sex Offender Registration Act, which include registrable conviction(s) or adjudication(s) from California and non-California jurisdictions, risk assessment scores and levels, and other criteria.

What are the mandatory minimum registration periods for individuals who were convicted of their registrable offenses in superior court?

Tier One: 10 years

Tier Two: 20 years

Tier Three – Risk Assessment Level: 20 years*

Tier Three: Lifetime

*Please refer to Penal Code section 290.5(b)(3) as amended under SB 384 for additional information

What are the mandatory minimum registration periods for individuals who were adjudicated of their registrable offenses in juvenile court?

Tier One: 5 years

Tier Two: 10 years

What is considered when determining whether I have met my mandatory minimum registration period?

Pursuant to Penal Code section 290(e), “the minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under the Sex Offender Registration Act (the Act), and by three years for each felony conviction of failing to register under the Act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person’s release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to

terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.”

Who determines my tier designation?

The CA DOJ designates the tiers of most sex offender registrants. However, pursuant to Penal Code section 290.006, on and after January 1, 2021, the court shall determine the tier designations for individuals ordered by the court to register. Registrants who are court-ordered to register will be designated as tier one unless the court finds the person should register as a tier two or tier three registrant and states on the record the reasons for its finding. An individual is court-ordered to register pursuant to Penal Code section 290.006 when an individual is convicted of an offense, is not required to register pursuant to Penal Code section 290, and the court makes a finding that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

Will I be notified of my tier designation?

Registrants may request their local registering agencies to provide them with their tier notification letters.

What if I disagree with my tier designation?

Registrants who feel they have been designated as the wrong tier as specified in the Act as amended under SB 384 should consult with a public defender’s office or a private attorney.

What tier will I be in if I have a registrable non-California sex offense conviction (out-of-state, federal, military)?

Pursuant to Penal Code section 290(d)(4), “[a] person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c). If the person’s requirement to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two registrant, except that the person is subject to registration as a tier three registrant if one of the following applies:

- (i) The person’s risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.
- (ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
- (iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.”

Will a risk assessment score affect my tier? What if I have never been scored on a risk assessment tool?

Pursuant to Penal Code section 290(d)(3)(D), a registrant who, based on their registrable offense(s) is otherwise a tier one or tier two offender, is a tier three offender if a registrant's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument. Such individuals are designated as "Tier Three – Risk Assessment Level" by the CA DOJ. Individuals who are otherwise tier three are designated as "Tier Three – Lifetime" by the CA DOJ.

Pursuant to Penal Code section 290.5(b)(3) as amended under SB 384, a registrant required to register as a tier three offender based solely on the person's risk level may petition the court for termination from the registry after 20 years from release from custody on the registrable offense if the individual meets additional certain criteria, as outlined in Penal Code section 290.5(b)(3) as amended under SB 384.

A score on a risk assessment tool is not required in order to be tiered by CA DOJ or for an individual to be eligible to petition.

If I was convicted in another state/jurisdiction and I am not required to register as a sex offender in that jurisdiction (out-of-state, federal, military), am I still required to register in California?

If a registrant has a non-California conviction for which they are no longer required to register in the state of conviction, they may still be required to register in California. Pursuant to Penal Code section 290(d)(4), if the CA DOJ determines that the individual's non-California conviction is equivalent to a registrable offense listed in Penal Code section 290(c), they are required to meet the mandatory minimum registration requirements for the applicable tier for that offense before petitioning for termination from the requirement to register as a sex offender in California.

What if the CA DOJ is unable to immediately determine my tier?

Pursuant to Penal Code section 290(d)(5), a registrant is placed in a tier-to-be-determined category if their appropriate tier designation cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which they register towards their mandated minimum registration period.

The CA DOJ shall ascertain an individual's appropriate tier designation within 24 months of their placement in the tier-to-be-determined category.

If my requirement to register as a sex offender in California is terminated and I subsequently move out of the state, am I required to register in my new state of residence?

Each state/jurisdiction has their own sex offender registration requirements; therefore, the CA DOJ cannot confirm a registrant's requirement to register as a sex offender in another state/jurisdiction. Registrants should contact the sex offender registry of the appropriate state/jurisdiction for additional information about registration requirements in that state/jurisdiction.

If I believe I already meet the mandatory minimum registration requirements as included in SB 384, do I still need to register?

Yes. Registrants must continue to register as sex offenders in accordance with the Act. After July 1, 2021, on or after their next birthday following the expiration of the minimum mandated registration period, specified registrants may petition the courts for termination of the requirement to register as a sex offender in accordance with SB 384.

However, registrants are required to continue registering in accordance with the Act unless and until a court grants a petition for termination of sex offender registration requirements in California.

Failure to continue registering in accordance with the Act may make you subject to prosecution for failure to register.

Megan’s Law Website

When will I be posted on the Megan’s Law website pursuant to SB 384?

Beginning January 1, 2022, the Megan’s Law website will reflect changes pursuant to SB 384. These changes include the elimination of certain exclusion criteria.

Who will be posted on the website?

Not all registrants will be posted on the public website. Penal Code section 290.46 as amended under SB 384 provides the criteria for individuals to be posted to the Megan’s Law website.

Will the exclusion criteria change for removal from the Megan’s Law website?

Yes. Pursuant to Penal Code section 290.46(d) as amended under SB 384, only registrants who meet the following requirements will be eligible to apply for exclusion on or after January 1, 2022.

“(i) An offense for which the registrant successfully completed probation, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim’s parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.

(ii) An offense for which the registrant is on probation at the time of his or her application, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim’s parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.

If, subsequent to his or her application, the registrant commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion from the Internet Web site shall be terminated.”

If I am currently excluded from the Megan’s Law website will I remain excluded?

Pursuant to amendments to Penal Code section 290.46 resulting from SB 384, registrants who were previously granted exclusion may no longer be eligible for exclusion. If the CA DOJ determines that a person who was granted an exclusion under a former version of Penal Code section 290.46(e) would not qualify for exclusion under Penal Code section 290.46(d) as amended under SB 384, the CA DOJ shall rescind the exclusion, make a reasonable effort to provide notification to registrant that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the registrant available to the public on the Megan’s Law website as provided in Penal Code section 290.46(d) as amended under SB 384.

Will my tier designation be posted on the Megan’s Law website?

No, your tier designation will not be posted on the Megan’s Law website.

Petition for Termination of Sex Offender Registration Requirement

(Pen. Code § 290.5 as amended under SB 384)

When and where do I petition for termination of my sex offender registration requirement in California?

On or after July 1, 2021, on or after their next birthday following the expiration of their mandated minimum registration period, registrants who meet the mandated minimum requirements may petition the superior court or juvenile court in the county in which they reside.

The CA DOJ cannot provide legal assistance. If assistance is required, a registrant may contact a local public defender’s office or a private attorney.

An individual who is registering solely for a juvenile adjudication will petition the juvenile court. An individual registering for an adult conviction of a sex offense, even if that person also registers for a juvenile adjudication, will petition the superior court.

Registrants must initiate the petition process by completing the petition forms, requesting proof of current registration from their individual registering law enforcement agencies, filing their petitions, and serving copies of their filed petitions on the required parties.

Where do I receive proof of current registration to attach to my petition?

The registrant’s current registering law enforcement agency will provide the proof of current registration upon request from the registrant.

Where can I find the petition forms?

Please contact your local superior or juvenile court to request information about the petition forms.

On whom do I serve my petition?

The petition is required to be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registrable offense if different than the county where the petition is filed.

Who grants or denies a petition for termination?

The superior court or juvenile court where the registrant filed their petition will either grant or deny the petition for termination. For more information on the criteria used to grant or deny a petition, please refer to Penal Code section 290.5 as amended under SB 384.

Can the court deny a petition without holding a hearing?

Pursuant to Penal Code section 290.5(a)(3) as amended under SB 118, “The court may summarily deny a petition if the court determines the petitioner does not meet the statutory requirements for termination of sex offender registration or if the petitioner has not fulfilled the filing and service requirements of this section. In summarily denying a petition the court shall state the reason or reasons the petition is being denied.”

What would make me automatically ineligible to petition?

Please find below a list of some scenarios that make you automatically ineligible to petition pursuant to SB 384. Please note that the below list does not include all the reasons you may be found automatically ineligible to petition.

- You have not met your minimum mandatory registration period pursuant to Penal Code section 290(e)
- There are pending charges against you which could extend the time to complete your tier or change your tier
- You are in custody
- You are on parole, probation, or supervised release
- You are a “Tier Three – Lifetime” registrant
- You have not fulfilled the filing and service requirements

Can a tier three registrant petition for termination of their sex offender registration requirement?

As addressed above, if a tier three registrant is designated as tier three solely due to their risk level, which was well above average risk (formerly high risk) on the static risk assessment tool for sex offenders, at least 20 years from release from custody on the registrant’s registrable offense, the registrant may petition for termination of their sex offender registration requirement unless the conviction offense is listed in Penal Code sections 1192.7 or 288. The court shall determine, based on factors listed in Penal Code section 290.5 as amended under SB 384, whether community safety would be significantly enhanced by continued registration.

Individuals designated as tier three solely due to their risk level are designated as “Tier Three – Risk Assessment Level” by the CA DOJ.

If you are designated as “Tier Three – Lifetime”, you may not petition for termination.

If my petition for termination is denied following a court hearing, when can I re-petition for termination?

Pursuant to Penal Code section 290.5 as amended under SB 384, the court shall set the time period after which the person can re-petition for termination for tier one and tier two registrants whose petitions for termination were denied following a hearing. The earliest re-petition date shall be at least one year from the date of the denial, but not more than five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may re-petition.

As noted above, “Tier Three – Risk Assessment Level” registrants may petition the court for termination of sex offender registration requirements. If the petition is denied, the re-petition date shall be three to five years from the date of denial. (Pen. Code § 290.5(b)(3) as amended under SB 384).

What will I receive from the court if my petition is granted?

Registrants will receive notice from the court whether their petition is granted or denied. Registrants should retain the court order for their own records.

How long will it take after my petition for termination is granted by the court for my registration requirement to be terminated by the CA DOJ?

The CA DOJ anticipates full termination from the registry after a petition is granted to take between 30-90 days. Please retain a copy of the court order granting your petition until you receive a letter from CA DOJ indicating your registration requirement has been fully terminated. Your requirement to register as a sex offender in California ends at the time the court grants your petition.

Whom may I contact for more information regarding how to file a petition for termination of my sex offender registration requirement?

Registrants may contact the local public defender’s office or a private attorney. The CA DOJ cannot provide legal advice.

California Department of Justice
Sex Offender Registry
SB384@doj.ca.gov

DECLARATION OF SUNG LEE

I, Sung Lee, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) Public Defender's Office and hold the title of Departmental Finance Manager II. I am responsible for oversight and management of the Fiscal/Budget Services division, including the complete and timely recovery of costs related to services mandated by the State.
2. Senate Bill (SB) 384 added Penal Code section 290.5 and mandates a new program aimed at removing certain qualified registrants from the sexual offender registry.
3. Penal Code section 290.5(a)(1) and (b)(1) states that persons who are required to register under Penal Code section 290 and who are Tier One, Tier Two or certain Tier 3 offenders may file a petition in the superior court for termination from the sex offender registry. The California Department of Justice website refers individuals to their local public defender's office for assistance in filing the petition. The Public Defender's Office has been incurring costs associated with the filing of these petitions.
4. Further, Penal Code section 290.5(a)(2) allows the district attorney's office to request a hearing with the court if they object to the termination of the registration requirement. Penal Code section 290.5(a)(3) states that the district attorney shall be entitled to present evidence at the hearing. Further, Penal Code section 290.5(a)(3) states that the court shall consider numerous factors in making their determination, including evidence derived from declarations, affidavits, and police reports submitted by the parties. Penal Code section 290.5(a)(3) creates a new hearing that results in registrants requiring the assistance of counsel. The public defender represents the petitioner to ensure the petitioner is afforded with due process. The Public Defender's Office has incurred costs associated with their representation of these individuals at these hearings.
5. The Post-Conviction Unit of the Public Defender's Office has been responsible for assisting individuals affected by the newly added program under Penal Code section 290.5. This Post-Conviction Unit has been instructed to time code their hours so that costs can be calculated.

6. I was advised by Head Deputy Debra Werbel to calculate the Public Defender's Office's costs associated with the implementation of the tiered sexual offender hearings under Penal Code section 290.5. Below is a chart reflecting my calculations:

FY 2021-22 SB 384 Cost Summary	Amount
2/1/2022 - 2/15/2022	\$ 11,701.42
2/16/2022 - 2/28/2022	\$ 11,672.19
3/1/2022 - 3/15/2022	\$ 17,224.18
3/16/2022 - 3/31/2022	\$ 11,863.63
4/1/2022 -4/15/2022	\$ 17,490.34
4/16/2022 -4/30/2022	\$ 20,105.60
Total	\$ 90,057.36

7. The Public Defender's Office first incurred costs related to implementing the mandate in SB 384, which added Penal Code section 290.5, on February 1, 2022.
8. The Public Defender's Office has incurred \$90,057.36 in Fiscal Year (FY) 2021-22 for their work related to Penal Code section 290.5.
9. The Public Defender's Office has not received any local, State, or federal funding to offset the increased direct and indirect costs associated with the representation of individuals subject to SB 384, which added Penal Code section 290.5.
10. Using the California Sex and Arson Registry (CSAR) report dated May 25, 2022, the Public Defender's Office estimates that there are 7,480 eligible petitioners in Los Angeles County. The PD reasonably estimates that these registrants may be eligible to petition over the next 20 years and that 1/20th of eligible petitioners (374) may petition in FY 2022-23. The hourly rate for a Deputy Public Defender III is \$193.10. At this time, the Public Defender's Office estimates four hours of work for each petition, which comes to \$772.40 per petition. Based on these figures, the Public Defender's Office estimates incurring costs of \$288,878 for FY 2022-23.
11. For the statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the Public Defender's Office reasonably estimates that there are 48,535 eligible petitioners in the State. The PD estimates that 1/20th (2,427) of the 48,535 Tier 1, Tier 2 or certain Tier 3 sex offenders may petition each year. Using the aforementioned \$772.40 cost per petition, the Public Defender's Office estimates an increased statewide cost of \$1,874,615 in FY 2022-23.
12. The Public Defender's Office is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to SB 384.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, California.



Sung Lee
Departmental Finance Manager II
Office of the Public Defender
County of Los Angeles

SECTION 7: SUPPORTING DOCUMENTS

COUNTY OF LOS ANGELES TEST CLAIM

**SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL
OFFENDER RECORD INFORMATION SYSTEMS**

STATE AND SENATE BILL

COMMITTEES AND RULES

CASELAW AND CODES



SB-384 Sex offenders: registration: criminal offender record information systems. (2017-2018)

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Date Published: 10/06/2017 09:00 PM

Senate Bill No. 384

CHAPTER 541

An act to amend Sections 9002 and 13125 of, and to amend, repeal, and add Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5, and 4852.03 of, the Penal Code, relating to sex offenders.

[Approved by Governor October 06, 2017. Filed with Secretary of State
October 06, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 384, Wiener. Sex offenders: registration: criminal offender record information systems.

Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking for purposes of committing various sex offenses or extortion, as specified, or attempts to commit those offenses, to register with local law enforcement agencies while residing in the state or while attending school or working in the state. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense.

Existing law requires the Department of Justice to make available to the public information concerning registered sex offenders on an Internet Web site, as specified. Existing law requires that information to include, among other things, whether the offender was subsequently incarcerated for another felony. Existing law also authorizes a person to file an application for exclusion from the Internet Web site and establishes the requirements for exclusion.

This bill would, commencing January 1, 2021, instead establish 3 tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses, and 5 years and 10 years for tiers one and two, respectively, for an adjudication as a ward of the juvenile court for specified sex offenses, as specified. The bill would allow the Department of Justice to place a person in a tier-to-be-determined category for a maximum period of 24 months if his or her appropriate tier designation cannot be immediately ascertained. The bill would, commencing July 1, 2021, establish procedures for termination from the sex offender registry for a registered sex offender who is a tier one or tier two offender and who completes his or her mandated minimum registration period under specified conditions. The bill would require the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. The bill would establish procedures for a person required to register as a tier three offender based solely on his or her risk level to petition the court for termination from the registry after 20 years from release of custody, if certain criteria are met. The bill would also, commencing January 1, 2022, revise the criteria for exclusion from the Internet Web site.

Existing law requires all basic information stored in state or local criminal offender record information systems to be recorded in the form of specified data elements, including the disposition of the offense.

This bill would require that information to include sentence enhancement data elements.

Existing law establishes the Sex Offender Management Board within the jurisdiction of the Department of Corrections and Rehabilitation. Existing law requires the board to address issues, concerns, and problems related to the community management of adult sex offenders.

This bill would instead require the board to address any issues, concerns, and problems related to the community management of all sex offenders.

This bill would incorporate additional changes to Section 290 of the Penal Code proposed by AB 484 to be operative as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 1.5. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence

within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 288, 288a, or 289.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 288, 288a, or 289.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

- (I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.
- (J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.
- (K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.
- (L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.
- (M) The person was convicted of violating Section 264.1.
- (N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.
- (O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.
- (P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 288a.
- (Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.
- (R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.
- (4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).
- (B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:
- (i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.
- (ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
- (iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
- (5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.
- (B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.
- (e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall

commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

(f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

(g) This section shall become operative on January 1, 2021.

SEC. 2.5 Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 288, 288a, or 289.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 288, 288a, or 289.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

(L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.

(M) The person was convicted of violating Section 264.1

- (N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.
- (O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.
- (P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 288a.
- (Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.
- (R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.
- (4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).
- (B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:
- (i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.
- (ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
- (iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
- (5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.
- (B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.
- (e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.
- (f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.
- (g) This section shall become operative on January 1, 2021.

SEC. 3. Section 290.006 of the Penal Code is amended to read:

290.006. (a) Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 4. Section 290.006 is added to the Penal Code, to read:

290.006. (a) Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) The person shall register as a tier one offender in accordance with paragraph (1) of subdivision (d) of Section 290, unless the court finds the person should register as a tier two or tier three offender and states on the record the reasons for its finding.

(c) In determining whether to require the person to register as a tier two or tier three offender, the court shall consider all of the following:

(1) The nature of the registerable offense.

(2) The age and number of victims, and whether any victim was personally unknown to the person at the time of the offense. A victim is personally unknown to the person for purposes of this paragraph if the victim was known to the offender for less than 24 hours.

(3) The criminal and relevant noncriminal behavior of the person before and after conviction for the registerable offense.

(4) Whether the person has previously been arrested for, or convicted of, a sexually motivated offense.

(5) The person's current risk of sexual or violent reoffense, including the person's risk level on the SARATSO static risk assessment instrument, and, if available from past supervision for a sexual offense, the person's risk level on the SARATSO dynamic and violence risk assessment instruments.

(d) This section shall become operative on January 1, 2021.

SEC. 5. Section 290.008 of the Penal Code is amended to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(d) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(e) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This section shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 6. Section 290.008 is added to the Penal Code, to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(d) (1) A tier one juvenile offender is subject to registration for a minimum of five years. A person is a tier one juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(2) A tier two juvenile offender is subject to registration for a minimum of 10 years. A person is a tier two juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A person who is required to register as a sex offender pursuant to this section may file a petition for termination from the sex offender registry in the juvenile court in the county in which he or she is registered at the expiration of his or her mandated minimum registration period, pursuant to Section 290.5.

(e) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(f) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required

to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This section shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(g) This section shall become operative on January 1, 2021.

SEC. 7. Section 290.45 of the Penal Code is amended to read:

290.45. (a) (1) Notwithstanding any other law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person's arrest.

(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender's name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim. It shall not include any Internet identifier submitted pursuant to this chapter.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of further disclosure. A law enforcement entity may not authorize any disclosure of this information by placing that information on an Internet Web site, and shall not authorize disclosure of Internet identifiers submitted pursuant to this chapter, except as provided in subdivision (h).

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) A person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(2) A person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(f) For purposes of this section, "designated law enforcement entity" means the Department of Justice, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in Section 290, regardless of when it was committed.

(h) (1) Notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier submitted pursuant to this chapter, or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

(2) A designated law enforcement entity shall not disclose or authorize persons or entities to disclose an Internet identifier submitted pursuant to this chapter to the public or other persons, except as required by court order.

(i) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 8. Section 290.45 is added to the Penal Code, to read:

290.45. (a) (1) Notwithstanding any other law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person's current risk of sexual or violent reoffense, including, but not limited to, the person's static, dynamic, and violence risk levels on the SARATSO risk tools described in subdivision (f) of Section 290.04.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person's arrest.

(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender's name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim. It shall not include any Internet identifier submitted pursuant to this chapter.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of further disclosure. A law enforcement entity may not authorize any disclosure of this information by placing that information on an Internet Web site, and shall not authorize disclosure of Internet identifiers submitted pursuant to this chapter, except as provided in subdivision (h).

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) A person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(2) A person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(f) For purposes of this section, "designated law enforcement entity" means the Department of Justice, a district attorney, the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to each offense described in Section 290, regardless of when it was committed.

(h) (1) Notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier submitted pursuant to this chapter, or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

(2) A designated law enforcement entity shall not disclose or authorize persons or entities to disclose an Internet identifier submitted pursuant to this chapter to the public or other persons, except as required by court order.

(i) This section shall become operative on January 1, 2021.

SEC. 9. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of State Hospitals shall provide to the Department of Justice the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division

6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before January 1, 2013, the department shall make available to the public via the Internet Web site his or her static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.

(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make

available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

(L) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subdivision (c) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, if the offense is a misdemeanor.

(C) A felony violation of Section 311.1, subdivision (b), (c), or (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if the person submits to the department a certified copy of a probation report filed in court that clearly states that all victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

(D) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(iii) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(iv) For the purposes of this subparagraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(3) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(i) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(l) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(o) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available

information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

(p) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 10. Section 290.46 is added to the Penal Code, to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of State Hospitals shall provide to the Department of Justice the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) With respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is otherwise described in, paragraph (2), or who is a tier three offender as described in paragraph (3) of subdivision (d) of Section 290, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a), except that information about persons required to register as a result of an adjudication as a ward of the juvenile court pursuant to Section 290.008 shall not be

made available on the Internet Web site. The department shall also make available to the public via the Internet Web site his or her static SARATSO risk level, if any, and information on an elevated risk level based on the SARATSO future violence tool. Any registrant whose information is listed on the public Internet Web site on January 1, 2022, by the Department of Justice pursuant to this subdivision, may continue to be included on the public Internet Web site while the registrant is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.

(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(V) A tier three offender, as described in paragraph (3) of subdivision (d) of Section 290.

(c) (1) With respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is otherwise described in, paragraph (2) of subdivision (d) of Section 290 and who is a tier two offender, and with respect to a person who has been convicted of the commission or the attempted commission of Section 647.6, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides, except that information about persons required to register as a result of an adjudication as a ward of the juvenile court pursuant to Section 290.008 shall not be made available on the Internet Web site. Any registrant whose information is listed on the public Internet Web site on January 1, 2022, by the Department of Justice

pursuant to this subdivision may continue to be included on the public Internet Web site while the registrant is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290.

(2) Any registrant whose information was not included on the public Internet Web site on January 1, 2022, and who is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290 may have the information described in this subdivision made available to the public via the public Internet Web site.

(d) (1) (A) An offender who is required to register pursuant to the Sex Offender Registration Act may apply for exclusion from the Internet Web site if he or she demonstrates that the person's only registerable offense is either of the following:

(i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(B) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(C) For the purposes of this paragraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(2) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(3) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of average, below average, or very low as determined by the Coding Rules for the SARATSO static risk assessment instrument.

(e) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2), provided that the information about that person is also displayed on the Department of Justice's Megan's Law Internet Web site.

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning the current risk posed by a specific offender, including his or her risk of sexual or violent reoffense, as indicated by the person's SARATSO static, dynamic, and violence risk levels, as described in Section 290.04, if available.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b).

(f) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(i) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(k) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(l) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(m) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

(n) This section shall become operative on January 1, 2022.

SEC. 11. Section 290.5 of the Penal Code is amended to read:

290.5. (a) (1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

(A) Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 220, except assault to commit mayhem.

(C) Section 243.4, provided that the offense is a felony.

(D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 266, provided that the offense is a felony.

(G) Section 266c, provided that the offense is a felony.

(H) Section 266j.

(I) Section 267.

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Section 288.7.

(R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(S) Subdivision (i) or (j) of Section 289.

(T) Section 647.6.

(U) The attempted commission of any of the offenses specified in this paragraph.

(V) The statutory predecessor of any of the offenses specified in this paragraph.

(W) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.

(b) (1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (d) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

(c) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 12. Section 290.5 is added to the Penal Code, to read:

290.5. (a) (1) A person who is required to register pursuant to Section 290 and who is a tier one or tier two offender may file a petition in the superior court in the county in which he or she is registered for termination from the sex offender registry at the expiration of his or her mandated minimum registration period, or if the person is required to register pursuant to Section 290.008, he or she may file the petition in juvenile court on or after his or her birthday following the expiration of the mandated minimum registration period. The petition shall contain proof of the person's current registration as a sex offender.

(2) The petition shall be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registerable offense if different than the county where the petition is filed. The registering law enforcement agency and the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290. If an offense which may require registration pursuant to Section 290.005 is identified by the registering law enforcement agency which has not previously been assessed by the Department of Justice, the registering law enforcement agency shall refer that conviction to the department for assessment and determination of whether the conviction changes the tier designation assigned by the department to the offender. If the newly discovered offense changes the tier designation for that person, the department shall change the tier designation pursuant to subdivision (d) of Section 290 within three months of receipt of the request by the registering law enforcement agency and notify the registering law enforcement agency. If more time is required to obtain the documents needed to make the assessment, the department shall notify the registering law enforcement agency of the reason that an extension of time is necessary to complete the tier designation. The registering law enforcement agency shall report to the district attorney and the court that the department has requested an extension of time to determine the person's tier designation based on the newly discovered offense, the reason for the request, and the estimated time needed to complete the tier designation. The district attorney in the county where the petition is filed may, within 60 days of receipt of the report from either the registering law enforcement agency, the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed, or the district attorney of the county of conviction of a registerable offense, request a hearing on the petition if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration. If no hearing is requested, the petition for termination shall be granted if the court finds the required proof of current registration is presented in the petition, provided that the registering agency reported that the person met the requirement for termination pursuant to subdivision (e) of Section 290, there are no pending charges against the person which could extend the time to complete the registration requirements of the tier or change the person's tier status, and the person is not in custody or on parole, probation, or supervised release.

(3) If the district attorney requests a hearing, he or she shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court shall consider: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or

violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is reliable, material, and relevant.

(4) If termination from the registry is denied, the court shall set the time period after which the person can repetition for termination, which shall be at least one year from the date of the denial, but not to exceed five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may repetition.

(5) The court shall notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted or denied. If the petition is denied, the court shall also notify the Department of Justice, California Sex Offender Registry, of the time period after which the person can file a new petition for termination.

(b) (1) A person required to register as a tier two offender, pursuant to paragraph (2) of subdivision (d) of Section 290, may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply: (A) the registerable offense involved no more than one victim 14 to 17 years of age, inclusive; (B) the offender was under 21 years of age at the time of the offense; (C) the registerable offense is not specified in subdivision (c) of Section 667.5, except subdivision (a) of Section 288; and (D) the registerable offense is not specified in Section 236.1.

(2) A tier two offender described in paragraph (1) of subdivision (b) may file a petition with the superior court for termination from the registry only if he or she has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and has registered for 10 years pursuant to subdivision (e) of Section 290. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least one year.

(3) A person required to register as a tier three offender based solely on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, may petition the court for termination from the registry after 20 years from release from custody on the registerable offense, if the person (A) has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and (B) has registered for 20 years pursuant to subdivision (e) of Section 290; except that a person required to register for a conviction pursuant to Section 288 or an offense listed in subdivision (c) of Section 1192.7 who is a tier three offender based on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, shall not be permitted to petition for removal from the registry. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least three years.

(c) This section shall become operative on July 1, 2021.

SEC. 13. Section 4852.03 of the Penal Code is amended to read:

4852.03. (a) The period of rehabilitation commences upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) An additional four years in the case of a person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Section 290, except that in the case of a person convicted of a violation of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or 314, an additional two years.

(3) An additional two years in the case of a person convicted of committing an offense that is not listed in paragraph (1) or paragraph (2) and that does not carry a life sentence.

(4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that the statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(b) Unless and until the period of rehabilitation required by subdivision (a) has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

(d) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 14. Section 4852.03 is added to the Penal Code, to read:

4852.03. (a) The period of rehabilitation commences upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) An additional four years in the case of a person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) (A) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Sections 290 to 290.024, inclusive.

(B) A certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under Section 290.5.

(3) An additional two years in the case of a person convicted of committing an offense that is not listed in paragraph (1) or (2) and that does not carry a life sentence.

(4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that the statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(b) Unless and until the period of rehabilitation required by subdivision (a) has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

(d) This section shall become operative on July 1, 2021.

SEC. 15. Section 9002 of the Penal Code is amended to read:

9002. (a) The board shall address any issues, concerns, and problems related to the community management of sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization.

(b) The board shall conduct public hearings, as it deems necessary, to provide opportunities for gathering information and receiving input regarding the work of the board from concerned stakeholders and the public.

(c) The members of the board shall be immune from liability for good faith conduct under this chapter.

SEC. 16. Section 13125 of the Penal Code is amended to read:

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

Name—(full name)

Aliases

Monikers

Race

Sex

Date of birth

Place of birth (state or country)

Height

Weight

Hair color

Eye color

CII number

FBI number

Social security number

California operator's license number

Fingerprint classification number

Henry

NCIC

Address

The following arrest data:

Arresting agency

Booking number

Date of arrest

Offenses charged

Statute citations

Literal descriptions

Police disposition

Released

Cited and released

Turned over to

Complaint filed

The following misdemeanor or infraction data or preliminary hearing data:

County and court name

Date complaint filed

Original offenses charged in a complaint or citation

Held to answer

Certified plea

Disposition

Not convicted

Dismissed

Acquitted

Court trial

Jury trial

Convicted

Plea

Court trial

Jury trial

Date of disposition

Convicted offenses

Sentence

Sentence enhancement data elements

Proceedings suspended

Reason suspended

The following superior court data:

County

Date complaint filed

Type of proceeding

Indictment

Information

Certification

Original offenses charged in indictment or information

Disposition

Not convicted

Dismissed

Acquitted

Court trial

Jury trial

On transcript

Convicted—felony, misdemeanor

Plea

Court trial

Jury trial

On transcript
Date of disposition
Convicted offenses
Sentence
Sentence enhancement data elements
Proceedings suspended
Reason suspended
Source of reopened cases
The following corrections data:
Adult probation
County
Type of court
Court number
Offense
Date on probation
Date removed
Reason for removal
Jail (unsentenced prisoners only)
Offenses charged
Name of jail or institution
Date received
Date released
Reason for release
Bail on own recognizance
Bail
Other
Committing agency
County jail (sentenced prisoners only)
Name of jail, camp, or other
Convicted offense
Sentence
Sentence enhancement data elements
Date received
Date released
Reason for release
Committing agency
Division of Juvenile Justice
County
Type of court
Court number
Division of Juvenile Justice number
Date received
Convicted offense
Type of receipt

Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Department of Corrections and Rehabilitation
County
Type of court
Court number
Department of Corrections and Rehabilitation number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Mentally disordered sex offenders
County
Hospital number
Date received
Date discharged
Recommendation

SEC. 17. (a) (1) Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and Assembly Bill 484. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after Assembly Bill 484, in which case Section 1 of this bill shall not become operative.

(b) Section 2.5 of this bill incorporates changes made to Section 290 of the Penal Code proposed by both this bill and Assembly Bill 484. That section of this bill shall only become operative if (1) both bills are enacted, without regard to the order of enactment, and become effective on or before January 1, 2018, (2) each bill amends Section 290 of the Penal Code, (3) and this bill adds Section 290 to the Penal Code, in which case Section 2 of this bill shall not become operative.

190 Cal.App.3d 521 (1987)

234 Cal. Rptr. 795

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants. RINCON DEL DIABLO MUNICIPAL WATER DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants. COUNTY OF LOS ANGELES, Plaintiff and Respondent,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants.

Docket Nos. B006078, B011941, B011942.

Court of Appeals of California, Second District, Division Five.

February 19, 1987.

529 *529 COUNSEL

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

OPINION

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

530 Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together *530 under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.^[1] For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

APPEAL IN CASE NO. 2 CIVIL B011942

(County of Los Angeles Case)

FACTS AND PROCEDURAL HISTORY

County employs fire fighters for whom it purchased protective clothing and equipment, as required by title 8, California Administrative Code, sections 3401-3409, enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service."

531 County relies on Revenue and Taxation Code section 2207^[2] and former *531 section 2231,^[3] and California Constitution, article XIII B, section 6^[4] to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.^[5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.^[6]

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate (Code Civ. Proc., § 1085) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of
532 mandate was issued and other findings and orders made. It is from this judgment of *532 February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.^[7]

533 *533 **CONTENTIONS**

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

DISCUSSION

I

ISSUE OF STATE MANDATE

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state" in either complying with a "new program" or providing "an increased level of service of an existing program."^[8] State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in County of Los Angeles v. State of California (1987) 43 Cal.3d 46 [233 Cal. Rptr. 38, 729 P.2d 202].

534 *534 As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of article XIII B, section 6.

A. Waiver

(1a) We initially conclude that State has waived its right to contest the Board's findings. (2) Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so

inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. (*Medico-Dental etc. Co. v. Horton & Converse* (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; *Loughan v. Harger-Haldeman* (1960) 184 Cal. App.2d 495, 502-503 [7 Cal. Rptr. 581].) A right that is waived is lost forever. (*L.A. City Sch. Dist. v. Landier Inv. Co.* (1960) 177 Cal. App.2d 744, 752 [2 Cal. Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. (*People v. Murphy* (1962) 207 Cal. App.2d 885, 888 [24 Cal. Rptr. 803].)

(1b) State now contends to be an aggrieved party and seeks to dispute the Board's findings. However, it failed to seek judicial review of that November 20, 1979 decision (Code Civ. Proc., § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (*Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal. Rptr. 206, 624 P.2d 256]; Code Civ. Proc., § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. Administrative Collateral Estoppel

(3a) We next conclude that State is collaterally estopped from attacking the Board's findings. (4) Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must *535 be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People v. Sims* (1982) 32 Cal.3d 468, 484 [186 Cal. Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.) All of the elements of administrative collateral estoppel are present here.

(3b) The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (*County of Sacramento v. Loeb* (1984) 160 Cal. App.3d 446, 452 [206 Cal. Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (Gov. Code, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5) "[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal. Rptr. 657, 380 P.2d 97].) (3c) As we stated in our introduction of the parties in this case, the party *536 known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced v. State of California* (1984) 153 Cal. App.3d 777, 781 [200 Cal. Rptr. 642]), subsequent litigation on that issue is foreclosed here. (6) A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal. Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal. App.3d 274, 286-287 [93 Cal. Rptr. 907]; Rest.2d Judgments, § 28, p. 273.)^[9]

(3d) Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum — Board or court — the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement...." (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco v. Ang* (1979) 97 Cal. App.3d 673, 679 [159 Cal. Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally *537 estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. Executive Orders — A "New Program" Under Article XIII B, Section 6

(7) The recent decision by our Supreme Court in *County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6.^[10] We conclude that they are.

In *State of California*, the Court concluded that the term "program" has two alternative meanings: "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, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

(8) First, fire protection is a peculiarly governmental function. (*County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal. Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (*Verreos v. City and County of San Francisco* (1976) 63 Cal. App.3d 86, 107 [133 Cal. Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function.^[11]

538 *538 The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all

governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

State of California only defined the scope of the word "program" as used in California Constitution, article XIII B, section 6. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (*County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

ISSUE OF WHETHER COURT ORDERS EXCEEDED ITS JURISDICTION

A. The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine

(9) State begins its general attack on the judgment by citing the long-standing principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine.

(Cal. Const., art. III, § 3; art. XVI, § 7; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal. Rptr. 841, 629 P.2d 935].)^[12]

539 State *539 observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal. App.3d 393, 398 [231 Cal. Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S.F. v. Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal. App.3d 852, 856 [183 Cal. Rptr. 475].)

Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. (*Mandel v. Myers, supra*, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (Code Civ. Proc., § 1085) is the correct method of compelling State to perform a clear and present ministerial legal obligation. (*County of Sacramento v. Loeb, supra*, 160 Cal. App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "*appropriated*" by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10) By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or
540 other similar official to make appropriate expenditures *540 from such funds. [Citations.]" (*Mandel v. Myers, supra*, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively

approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." (*Id.* at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (*Id.* at pp. 543-544.)

Another illustration of this principle is found in *Serrano v. Priest* (1982) 131 Cal. App.3d 188 [182 Cal. Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for \$800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the \$800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11) State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel v. Myers, supra, 29 Cal.3d* at pp. 543-544. Likewise, in *Committee to Defend *541 Reproductive Rights v. Cory, supra, 132 Cal. App.3d* at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers XXXX-XXX-XXX, XXXX-XXX-XXX, XXXX-XXX-XXX and XXXX-XXX-XXX as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on...." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.)

542 *542 Again, in 1974, the Legislature stated: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... Sections 3401 to 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.)^[13]

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a) State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in *City of Sacramento v. State of California* (1984) 156 Cal. App.3d 182, 196-197 [203 Cal. Rptr. 258] disapproved on other grounds in *County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or *543 new programs. However, under Revenue and Taxation Code section 2271, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of Revenue and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13) (See fn. 14.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate.^[14]

(12b) Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not.... [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than *544 federal OSHA standards, are applicable to fire departments in that state...." This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not federally mandated.

(14a) The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule.^[15] This legislative restriction purported to make the reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

(15) The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal. App.3d 1187, 1196 [219 Cal. Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. (*Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 172-173 [28 Cal. Rptr. 724, 379 P.2d 28].)

545 (14b) The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction *545 alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have been made in connection with the enactment of a budget bill are appropriate here. "[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. `History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" (*Planned Parenthood Affiliates v. Swoap, supra*, 173 Cal. App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [211 Cal. Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

(16) The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in *County of Sacramento v. Loeb, supra*, 160 Cal. App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred.... `Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.'" (*Id.* at p. 459, quoting *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal. App.3d 907, 912 [159 Cal. Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims.

546 *546 (17) Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00^[16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement.

547 *547 **C. The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement**

(18) State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980

(19) State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

548 This notion was rejected in *City of Sacramento v. State of California*, *supra*, 156 Cal. App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation *548 and upon a prior published opinion of the Attorney General, the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred

(20) Sate collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (*County of Contra Costa v. State of California* (1986) 177 Cal. App.3d 62, 77 [222 Cal. Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period.^[17] (*Lerner v. Los Angeles City Board of Education, supra*, 59 Cal.2d at p. 398.)

549 *549 **F. Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order**

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in Government Code section 17612, subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that Government Code section 17612, subdivision (b) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21) A party is not required to exhaust a remedy that was not in existence at the time the action was filed. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 912, fn. 9 [141 Cal. Rptr. 133, 569 P.2d 727].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. (*Serrano v. Priest, supra*, 131 Cal. App.3d at p. 201.)

Also, this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override article XIII B, section 6 and Revenue and Taxation Code section 2207 and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.)^[18]

550 *550 **G. The Court's Order Properly Allows County the Right of Offset**

(22a) As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante*.) The fines and forfeitures are those found in Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5.^[19]

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23) The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 362 [113 Cal. Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (Code Civ. Proc., § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In *County of Sacramento v. Lackner* (1979) 97 Cal. App.3d 576 [159 Cal. Rptr. 1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the `submission, approval and enforcement of budgets....'" (*Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

551 (22b) The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified *551 fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. State's Use of its Statutory Offset Authority Was Properly Enjoined

(24) State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.)^[20] This order complemented that portion of the order discussed, *infra*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California* (1984) 153 Cal. App.3d 568 [200 Cal. Rptr. 394].)

I. The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper

552 (25) State continues that the order (fn. 7, ¶ 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates Government Code section 16304.1.^[21] This section reverts undisbursed *552 balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb, supra*, 160 Cal. App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. The Auditor Controller and the Specified Funds Are Not Indispensable Parties

(26), (27) State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.^[22] State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

553 The Auditor Controller is an officer of the County and is subject to the *553 direction and control of the County board of supervisors. (Gov. Code, §§ 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. County is Entitled to Interest

(28) State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation...." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state ... or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Civil Code section 3287, subdivision (a)." (*Olson v. Cory*, (1983) 35 Cal.3d 390, 404 [197 Cal. Rptr. 843, 673 P.2d 720].)

APPEAL IN CASE NO. 2 CIVIL B011941

(Rincon et al. Case)

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter.

554 *554 County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement in the amount of \$39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.^[23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento v. Loeb, supra*, 160 Cal. App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.^[24]

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

APPEAL IN CASE NO. 2 CIVIL B006078

(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here.

555 *555 On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totaling \$159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as \$159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in *City of Sacramento v. State of California, supra*, 156 Cal. App.3d at p. 182.^[25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not

commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6.

556 *556 State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

(29) State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. (*City of Merced v. State of California, supra, 153 Cal. App.3d at p. 781.*) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See Code Civ. Proc., § 389; fn. 22, *ante.*)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra*, which we rejected as meritless. The department is part of the State of California. (Lab. Code, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. (*People v. Sims, supra, 32 Cal.3d at p. 487.*)

557 *Ross v. Superior Court, supra, 19 Cal.3d at p. 899* demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, *557 who were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

MODIFICATION OF JUDGMENTS IN ALL THREE APPEALS

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano v. Priest, supra, 131 Cal. App.3d at p. 197.*) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

<i>Account Numbers</i>	<i>1985-1986 Budget Act</i>	<i>1986-1987 Budget Act</i>
XXXX-XXX-XXX	\$94,673,000	\$106,153,000
XXXX-XXX-XXX	2,295,000	2,514,000
XXXX-XXX-XXX	2,859,000	2,935,000
XXXX-XXX-XXX	16,753,000	17,864,000

(30) An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest, supra*, 131 Cal. App.3d at pp. 198, 201.) We do so here with respect to all three judgments.

558 *558 **DISPOSITION**

2d Civ. B011942 (County of Los Angeles Case)

The judgment is modified as follows:

- (1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."
- (2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.
- (3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B011941 (Rincon et al. Case)

The judgment is modified as follows:

- (1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."
- (2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B006078 (Carmel Valley et al. Case)

The judgment is modified as follows:

- 559 *559 (1) The following sentences are added to paragraph 2: "The reimbursement amounts total \$159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."
- (2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P.J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellants petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

[1] *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in Revenue and Taxation Code section 2211.

[2] The pertinent parts of Revenue and Taxation Code section 2207 provide: "'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973...."

[3] The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by Government Code section 17561. We will refer to the earlier code section.

[4] The pertinent parts of section 6, article XIII B of the California Constitution, enacted by initiative measure, provide: "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: [¶].... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.

[5] County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. (Gov. Code, §§ 17525, 17630.)

[6] The final legislation did include appropriations for other local agencies on other types of approved claims.

[7] "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with] this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers XXXX-XXX-XXX, XXXX-XXX-XXX, XXXX-XXX-XXX, and XXXX-XXX-XXX as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [sic] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [sic] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of \$307,685 in this case, together with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are

hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in Penal Code Sections 1463.02, 1463.03, 14[6]3.5[a], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 subsequent to fiscal year 1979-80.

".....

"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of Title 8, California Administrative Code Sections 3401 through 3409."

[8] This language is taken from Revenue and Taxation Code section 2207 and former section 2231. Article XIII B, section 6 refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

[9] As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

[10] State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

[11] County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in title 8, California Administrative Code section 3402, which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

[12] Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

[13] When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

[14] We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (*City of Sacramento v. State of California*, *supra*, 156 Cal. App.3d at pp. 196-197.)

[15] Article IV, section 9 of the California Constitution reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

[16] Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in section 2209 of the Revenue and Taxation Code or subject to the provisions of section 2231 of the Revenue and Taxation Code, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

[17] Technically, State has waived the statute of limitations defense because it was not raised in its answer. (*Ventura County Employees' Retirement Association v. Pope* (1978) 87 Cal. App.3d 938, 956 [151 Cal. Rptr. 695].)

[18] We leave undecided the question of whether this type of legislation could ever be held to override California Constitution, article XIII B, section 6. The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (*County of Los Angeles v. Payne, supra*, 8 Cal.2d at p. 574.)

Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

[19] At oral argument, County conceded that the order authorizing offset of Fish and Game Code section 13100 fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. (Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 (1952).)

[20] Government Code section 12419.5 provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler v. State of California* (1982) 134 Cal. App.3d 973, 975-976 [185 Cal. Rptr. 49].)

[21] Government Code section 16304.1 provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years ... following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

[22] Code of Civil Procedure section 389, subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

[23] Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

[24] Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

[25] The decision in *City of Sacramento, supra*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

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CITATION 43 CAL.3D 46

County of Los Angeles v. State of California

OPINION

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County of Los Angeles v. State of California (1987) 43 Cal.3d 46 , 729 P.2d 202; 233 Cal.Rptr. 38

[L.A. No. 32106. Supreme Court of California. January 2, 1987.]

COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents.

CITY OF SONOMA et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

(Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

COUNSEL

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OPINION

GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. [1] We conclude that 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. Rather, the drafters and the electorate had in mind subvention for the expense or [43 Cal.3d 50] 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. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "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." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. fn. 1

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which [43 Cal.3d 51] employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from \$231 per week to \$262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from \$55,000 to \$75,000. No appropriation for increased state-mandated costs was made in this legislation. fn. 2

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207. fn. 3 They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly [43 Cal.3d 52] excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost

of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from \$73.50 to \$168, and the maximum from \$262.50 to \$336. For permanent partial disability the weekly wage was raised from a minimum of \$45 to \$105, and from a maximum of \$105 to \$210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A \$10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from \$75,000 to \$85,000 for deaths in 1983, and to \$95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIII B of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.) fn. 4

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or [43 Cal.3d 53] section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and willful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service" fn. 5 described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and

the failure of the Legislature by statute or the electorate in article XIII B to readopt the [43 Cal.3d 54] definition must be treated as reflecting an intent to change the law. (Eu v. Chacon (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].) fn. 6 On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. fn. 7

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been [43 Cal.3d 55] included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975, ch. 486, §§ 6 & 7, p. 999.) fn. 8 Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that "'Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

[2] Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (Lake Forest Community Assn. v. County of Orange (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also Eu v. Chacon, supra, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. 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. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been [43 Cal.3d 56] aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

[3] In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (ITT World Communications, Inc. v. City and County of San Francisco (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new

program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

[4] 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.

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 those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to force programs on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. *Italics added.*) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not [43 Cal.3d 57] for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote. fn. 9 Certainly no such intent is reflected in the language or history of article XIII B or section 6.

[5] We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation [43 Cal.3d 58] benefits that employees of private individuals or organizations receive. fn. 10 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.

IV

[6] Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (Clean Air Constituency v. California State Air Resources Bd. (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; Serrano v. Priest (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (Legislature v. Deukmejian (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article XIV, section 4, fn. 11 gives the Legislature "plenary power, unlimited by any provision of [43 Cal.3d 59] this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural [43 Cal.3d 60] limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Husted v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article XIV,

section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal pro tanto' of any state constitutional provisions which conflicted with that [43 Cal.3d 61] amendment. (Subsequent Etc. Fund. v. Ind. Acc. Com. (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 695, [151 P. 398].) A pro tanto repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. City and County of San Francisco v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power -- the disciplining of attorneys -- that otherwise rests exclusively with this court?" (Hustedt v. Workers' Comp. Appeals Bd., supra, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

[7] A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. 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.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in [43 Cal.3d 62] benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal -- whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to ~~87~~ approve the claims

lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living [43 Cal.3d 63] adjustment. I agree with the Court of Appeal that this was permissible.

FN 1. The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...

The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

FN 2. The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of \$510 on which to base benefits, an unspecified appropriation was included.

FN 3. The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

FN 4. The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

FN 5. The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

FN 6. The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, ante). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. *California Employment Stabilization Co. v. Payne* (1947) 31 Cal.2d 210, 213–214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

FN 7. We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

FN 8. Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218–2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (*County of Orange v. Flournoy* (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)

FN 9. Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

FN 10. The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

FN 11. Section 4: "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the

course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed."
(Italics added.)





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15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134,
Med & Med GD (CCH) P 45,112, 97 Cal. Daily
Op. Serv. 1555, 97 Daily Journal D.A.R. 2296
Supreme Court of California

COUNTY OF SAN DIEGO, Cross-
complainant and Respondent,

v.

THE STATE OF CALIFORNIA et al.,
Cross-defendants and Appellants.

No. S046843.

Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate (Code Civ. Proc., § 1085) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, * Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that Cal. Const., art. XIII B, § 6, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court

of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of Cal. Const., art. XIII B, § 6. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least \$41 million on the CMS *69 program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c), Welf. & Inst. Code, §§ 10000, 17000) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with

George, C. J., Mosk, and Baxter, JJ., Anderson, J.,* and Aldrich, J.,† concurring. Dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.

*70 Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), 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 Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

(2a, 2b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.

The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to

the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3)

Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.

The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const., art. VI, § 10. *71 That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

(4)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided

prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(5a, 5b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards-- *72 Eligibility.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would

have taken corrective action if it disagreed. (Disapproving *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under Welf. & Inst. Code, § 17000, extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of Welf. & Inst. Code, § 17000, but do not qualify for Medi-Cal.)

(6)



Public Aid and Welfare § 4--County Assistance--Counties' Discretion.

Counties may exercise their discretion under Welf. & Inst. Code, § 17001 (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose (Gov. Code, § 11374). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. *73

(7)


State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have

held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving  *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [ 261 Cal.Rptr. 706] to the extent it held that Health & Saf. Code, § 1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.



In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county *74 had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on Welf. & Inst. Code, former § 16990, subd. (a), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, Welf. & Inst. Code, former § 16990, subd. (a), did not mandate a minimum funding requirement. Nor did Welf. & Inst. Code, former § 16991, subd. (a)(5), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under  Welf. & Inst. Code, § 16703, for 1988-1989. Nothing

about this requirement imposed on the county a minimum funding requirement.

(9)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.

In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's

position. Mandamus under  Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under  Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. *75

COUNSEL

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CHIN, J.

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject

to certain exceptions, to “provide a subvention of funds to reimburse” local governments “[w]henver the Legislature or any state agency mandates a new program or higher level of service” In this action, the County of San Diego (San Diego or the County) seeks reimbursement under section 6 from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see Welf. & Inst. Code, § 14063)¹ because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted section 6, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*.) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks *76 reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, “the indigent in California were provided health care services through a variety of different programs and institutions.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p.

3 (Preliminary Report).) County hospitals “provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from” other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established “a program of basic and extended health care services for recipients of public assistance and for medically indigent persons.” (*Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*); *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It “represent[ed] California's implementation of the federal Medicaid program (42 U.S.C. §§ 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]” (*Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748, 751 [55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*)). “[B]y meeting the requirements of federal law,” Medi-Cal “qualif[ied] California for the receipt of federal funds made available under title XIX of the Social Security Act.” (*Morris, supra*, 67 Cal.2d at p. 738.) “Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients” (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code *77 Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements “with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources”].)²

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of

1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report.) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were “not sufficient to meet the cost of health care.” (*Morris, supra*, 67 Cal.2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, “a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of” the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*)). In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: “The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council “to study this problem and report its findings to the Legislature no later than March 1, 1967.” (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would “leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal.” (*Hall, supra*, 23 Cal.App.3d at p. 1061, fn. omitted.) Former section 14150.1, *78 which was known as the “county option” or the “option plan,” required a county “to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care.”³ (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*)). Under the county option, “the state agreed to assume all county health care costs ... in excess of” the county's payment.

(*Id.* at p. 586.) It “made no distinction between 'linked' and 'nonlinked' persons,” and “simply guaranteed a medical cost ceiling to counties electing to come within the option plan.” (*Ibid.*) “Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state.” (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option “guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs.”⁴ (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a “significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately \$76 million for care of non-Medi-Cal indigents in county hospitals.” (Preliminary Rep., *supra*, at p. 31.) These state funds paid “costs that would otherwise have been borne by counties through increases in property taxes.” (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) “[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons *79 served by a county within the 'option' plan.” (*Lackner, supra*, 97 Cal.App.3d at p. 589; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults “who [were] financially unable to pay for their medical care.” (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met “the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient.” (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring “approximately 800,000 additional medically needy Californians” into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as “[n]oncategorically related needy person [s].” (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as “medically indigent person[s]” (MIP's) and provided

them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (□ *Kinlaw, supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible *80 under the MIP category (adult MIP's or Medically Indigent Adults).⁵ (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; □ *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*.) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section

14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (□ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [□ *81 280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*.) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (□ *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [□ 7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "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 [□ 266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (□ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [□ 233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*.)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It

provides in relevant part: “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: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.

(*County of Fresno, supra*, 53 Cal.3d at p. 487.) Its purpose 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. (*County of Fresno, supra*, 53 Cal.3d at p. 487; *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 “[e]ssentially” requires the state “to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [*15 Cal.Rptr.2d 547*].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (Gov. Code, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, §§ 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (Gov. Code, § 17557.) The local agency must then follow certain statutory procedures to *82 obtain reimbursement. (Gov. Code, § 17558 et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file “an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (Gov. Code, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under section 1094.5 of the Code of Civil Procedure. (Gov. Code, § 17559.) Government Code section 17552 declares that these

provisions “provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6”

III. Administrative and Judicial Proceedings

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.⁶ (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a “pre-existing duty” to provide medical care to the medically indigent under section 17000. That section provides in relevant part: “Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it “was enacted prior to January 1, 1975” Finally, the Commission found no mandate because the 1982 legislation “neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors” pursuant to section 17001.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory *83 writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)⁷ In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this agreement, San Diego sought to intervene. Explaining that

it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand.⁸

B. The San Diego Action

1. Administrative Attempts to Obtain Reimbursement

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (Gov. Code, § 17525.) On April 12, the Controller returned the invoice “without action,” stating that “[n]o appropriation has been given to this office to allow for reimbursement” of medical costs for adult MIP's and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. *84

2. Court Proceedings

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego “from taking any action to reduce or terminate” the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under Code of Civil Procedure section 1085 against the state, the Commission, and various state officers.⁹ The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had “previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs.” “Under these circumstances,” San Diego asserted, “denial of the County's claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act.”

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it “is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991”; (2) that section 6 requires the state “to fully fund the CMS Program” (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the *85 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim

for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate.¹⁰ The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San *86 Diego's mandate claim. According to the state, in *Kinlaw, supra*, 54 Cal.3d 326, we “unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time.” Thus, if a test claim is pending, “other potential claims must be held in abeyance” Applying this principle, the state asserts that, since “the test claim litigation was pending” in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, “the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein.”

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which “are the exclusive means” for determining and enforcing the state's section 6 obligations, “are available only to local agencies and school districts directly affected by a state

mandate” (*Kinlaw, supra*, 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 “is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services.” (*Id.* at p. 334.) We concluded that “[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues.” (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing Government Code section 17500, we explained that “the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process.” (*Kinlaw, supra*, 54 Cal.3d at p. 331.) Thus, the governing statutes “establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.” (*Id.* at p. 333.) Specifically, “[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies” (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: “The test claim by the County of Los Angeles was filed prior to that *87 proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues Los Angeles County declined a request from Alameda County that it be included in the test claim” (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of “the express purpose[s]” of the statutory procedure: to “avoid[] multiple proceedings ...

addressing the same claim that a reimbursable state mandate has been created.” (*Kinlaw, supra*, 54 Cal.3d at p. 333.)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from article VI, section 10 of the California Constitution. (□ *Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [□ 93 Cal.Rptr. 234, 481 P.2d 242]; □ *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [□ 20 Cal.Rptr.2d 246].) That section gives “[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus” (Cal. Const., art. VI, § 10.) “The jurisdiction thus vested may not lightly be deemed to have been destroyed.” (□ *Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [□ 196 P.2d 884], overruled on another ground in □ *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [□ 95 Cal.Rptr. 197, 485 P.2d 261].) “While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.” (□ *Garrison, supra*, at p. 436.) (2b) Here, we find no statutory provision that either “expressly provide[s]” (□ *id.* at p. 435) or otherwise “clearly intend[s]” (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: “Where any trust *88 has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust.” (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, “the superior court, sitting in probate

upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust.” (*Dowdall, supra*, 183 Cal. at p. 353.) However, we further observed that “the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof.” (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction “is not without jurisdiction.” (*Dowdall, supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; □ *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) [“rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void”]; □ *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 718 [□ 53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in *89 deference to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].)¹¹

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court.¹² (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [21 Cal.Rptr.2d 453]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*)). However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (*County of Contra Costa, supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also *County of Contra Costa, supra*, 177 Cal.App.3d at pp. 77-78.) *90

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously

noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement" Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar, supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations]" (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar, supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (*Lucia Mar, supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6" (*Lucia Mar, supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the [] *91 restrictions

on the taxing and spending power of the local entities” that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar*, *supra*, at pp. 835-836.) “The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6” (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* “that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—an obligation the school districts did not have at the time article XIII B was adopted—it calls for [the school districts] to support a 'new program' within the meaning of section 6.” (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us “are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs.” (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.)) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) “Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties.” (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.))

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* “is inapposite.” The school program at issue in *Lucia Mar* “had been wholly operated, administered and financed by the state” and “was unquestionably a 'state program.' ” “In contrast,” the state argues, “'the program here has never been operated or administered by the State of California. The

counties have always borne legal and financial responsibility for' ” it under section 17000 and its predecessors.¹³ The courts have interpreted section 17000 as “impos[ing] upon counties a duty to *92 provide hospital and medical services to indigent residents. [Citations.]” (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [*254 Cal.Rptr.* 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to “mandates enacted prior to January 1, 1975,” there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties “complete discretion” in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, “would erroneously expand the definition of what constitutes a 'new program' under” section 6. As we explain, we reject these arguments.

A. The Source and Existence of San Diego's Obligation

1. The Residual Nature of the Counties' Duty Under Section 17000

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That section creates “the residual fund” to sustain indigents “who cannot qualify ... under any specialized aid programs.” (*Mooney*, *supra*, 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [*223 Cal.Rptr.* 716] [general assistance “is a program of last resort”].) By its express terms, the statute requires a county to relieve and support indigent persons *only* “when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” (§ 17000.)¹⁴ “Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced” (*Kinlaw*, *supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.))¹⁵

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it

initially required counties to *93 contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs.¹⁶

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under section 17000. After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under section 17000. It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under section 17000; the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of [MIP's] to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (*Id.* at p. 571, italics added.) *94

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of section 17000. Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program" (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred.*" (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under section 17000 for the medical care of adult

MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under section 17000, counties had always borne the responsibility for providing medical care to adult MIP's.

2. The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal

To support its argument that it never relieved counties of their obligation under section 17000 to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." *95 (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "Section 14150 of the Welfare and Institutions Code is repealed." (Stats. 1979, ch. 282, § 74, p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption

of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.” (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, “[u]nder existing law, the counties pay a specified annual share of the cost of” Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that “[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal” (*Ibid.*) The 1979 legislation, the digest continued, “provid[ed] for state assumption of all county costs of Medi-Cal.” (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as “temporary.” In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as “a long-term local financing measure” (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which “[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State” (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: “Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated \$418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs.*” (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal “only temporarily.”

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3. State Administration of Medical Care for Adult MIP's Under Medi-Cal

The state argues that, unlike the school program before us in *Lucia Mar, supra*, 44 Cal.3d 830, which “had been wholly operated, administered and financed by the state,” the program for providing medical care to adult MIP's “has never been operated or administered by” the state. According to the state, Medi-Cal was simply a state “reimbursement program” for care that section 17000 required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was “to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) “In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program.” (*California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [106 Cal.Rptr. 555].) Medi-Cal “provided for reimbursement to both public and private health care providers for medical services rendered.” (*Lackner, supra*, 97 Cal.App.3d at p. 581.) It further directed that, “[i]nsofar as practical,” public assistance recipients be afforded “free choice of arrangements under which they shall receive basic health care.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to “prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs.” (§ 14000.2.) Thus, “Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility).” (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons “a choice of medical facilities for treatment,” Medi-Cal placed county health care providers “in competition with private hospitals.” (*Hall, supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203;

Belshé, supra, 13 Cal.4th at p. 751; *Morris, supra*, 67 Cal.2d at p. 741; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, “[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State *97 responsibility under the Medi-Cal program. [Citation.]” (*Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal “shifted to the state” the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that Penal Code section 987.9, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 “to reimburse counties for their costs under” the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because Penal Code section 987.9 merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates, supra*, at pp. 814-816.) Thus, the court stated, “[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program” under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under *Lucia Mar, supra*, 44 Cal.3d 830, the state's “decision not to reimburse the counties for their programs under [Penal Code] section 987.9” imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates,*

supra, 32 Cal.App.4th at p. 817.) The court explained: “In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility.” (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a *98 method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced.¹⁷

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under section 17000. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: “transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public.”¹⁸

(*County of Los Angeles, supra*, 43 Cal.3d at p. 56; see also *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68 [A “central purpose” of section 6 was “to prevent the state's transfer of the *cost of government* from *itself* to the local level.”].) Accordingly, we view the 1982 legislation as having mandated a “ ‘new program’ ” on counties by “compelling them to accept financial responsibility in whole or in part for a program,” i.e., medical care for adult MIP's, “which was funded entirely by the state before the advent of article XIII B.”¹⁹ (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. “County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further” (*Kinlaw, supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.)) As we have previously explained,

the voters, recognizing that articles XIII A and XIII B left counties “ill equipped” to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (■ *99 *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, “focus[] on one phase in th[e] shifting pattern of [financial] arrangements” between the state and the counties. Under section 6, the state simply cannot “compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B”²⁰ (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

B. County Discretion to Set Eligibility and Service Standards

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds “only on those whom the *county* deems eligible *under § 17000*,” “gave the county exclusive authority to determine the level and type of benefits it would provide,” and required counties “to include [adult MIP’s] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**”²¹ (Original emphasis.) According to the state, under section 17001, “[t]he counties have *100 complete discretion over the determination of eligibility, scope of benefits and how the services will be provided.”²²

The state exaggerates the extent of a county’s discretion under section 17001. It is true “case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]” (■ *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*)). However, there are “clear-cut limits” to this discretion. (*Ibid.*) (6) The counties may exercise their discretion “only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency’s regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (■ Gov. Code, § 11374.)” (*Mooney, supra*, 4 Cal.3d at p. 679.) Thus, the counties’ eligibility

and service standards must “carry out” the objectives of section 17000. (*Mooney, supra*, 4 Cal.3d at p. 679; see also ■ *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [■ 261 Cal.Rptr. 545]; § 11000 [“provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program”].) County standards that fail to carry out section 17000’s objectives “are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.” (*Morris, supra*, 67 Cal.2d at p. 737.) Courts, which have “‘final responsibility for the interpretation of the law,’ ” must strike them down. (*Id.* at p. 748.) Indeed, despite the counties’ statutory discretion, “courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]” (■ *Robbins, supra*, 38 Cal.3d at p. 212.)

1. Eligibility

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP’s. As we emphasized in *Mooney*, section 17000 requires counties to relieve and support “*all indigent persons lawfully resident therein, when such persons are not supported and relieved by their relatives*” or by some other means.’ ” (*Mooney, supra*, 4 Cal.3d at p. 678; see also ■ *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [■ 130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory “purpose” of division 9 of the Welfare and Institutions Code, which includes *101 section 17000, “is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed.” (Italics added.) Thus, counties have no discretion to refuse to provide medical care to “indigent persons” within the meaning of section 17000 who do not receive it from other sources.²³ (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not “defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support”]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly “voided county ordinances which have attempted to redefine eligibility standards set by state statute”].)

Although section 17000 does not define the term “indigent persons,” the 1982 legislation made clear that all adult MIP’s fall within this category for purposes of defining a county’s obligation to provide medical care.²⁴ As part of its exclusion of adult MIP’s, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c) (1), to require that a county board of supervisors, in applying for MISA funds, “assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to Section 17000 ...” (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that “[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided.” (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, “counties had to include [Medically Indigent Adults] in their [section] 17000 eligibility” standards. By requiring counties to make all adult MIP’s eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under section 17000, the Legislature established that all adult MIP’s are “indigent persons” for purposes of the counties’ duty to provide medical care under section 17000. Otherwise, the counties could not comply with their promise. *102

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it “operative only until June 30, 1985, unless a later enacted statute extends or deletes that date.”²⁵ As we have explained, the subdivision established that adult MIP’s are “indigent persons” within the meaning of section 17000 for medical care purposes. As we have also explained, section 17000 requires counties to relieve and support *all* “indigent persons.” Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP’s from eligibility for medical services, section 17000 has that effect.²⁶

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP’s as “indigent persons” within the meaning of section 17000 for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal

program, which covered only categorically linked persons, it “declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered” by Medi-Cal, “whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties’ Medi-Cal cost share would not leave counties “with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal,” the Legislature also created the county option. (*Hall, supra*, 23 Cal.App.3d at p. 1061.) Through the county option, “the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases.” (*Lackner, supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all “indigent persons” entitled to medical care under section 17000, and required the state to share in the financial responsibility for providing that care.

In adding adult MIP’s to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons “who [were] financially unable to pay for their medical care.” (Legis. Counsel’s Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This *103 description was consistent with prior judicial decisions that, for purposes of a county’s duty to provide “indigent persons” with hospitalization, had defined the term to include a person “who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support.” (*Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [154 P.2d 510].)

Moreover, the fate of amendments to section 17000 proposed at the same time suggests that, in the Legislature’s view, the category of “indigent persons” entitled to medical care under section 17000 extended even *beyond* those eligible for Medi-Cal as MIP’s. The June 17, 1971, version of Assembly Bill No. 949 amended section 17000 by adding the following: “however, the health needs of such persons shall be met under [Medi-Cal].” (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: “The proposed amendment to Section 17000, ... which would

have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend section 17000 in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under section 17000, we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under section 17000 to continue to provide services to those eligible under section 17000 but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. *104 (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829 [*25 Cal.Rptr.2d 148, 863 P.2d 218*].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of section 17000 and would have taken corrective action if it disagreed with that construction. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [*270 Cal.Rptr. 796, 793 P.2d 2*].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under section 17000 to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under section 17000

for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population.²⁷

2. Service Standards

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. Section 17000 requires in general terms that counties "relieve and support" indigent persons. Section 10000, which sets forth the purpose of the division containing section 17000, declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care" (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*)).

Courts construing section 17000 have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just *105 emergency care. [Citation.]" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [*18 Cal.Rptr.2d 487*]; see also *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [*40 Cal.Rptr.2d 271*]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under Section 17000"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather, supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health" (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke, supra*, 213 Cal.App.3d at page 404, which held that section 17000 requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent

significant illness or significant disability, or to alleviate severe pain”].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under Welfare and Institutions Code section 17000.²⁸ As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people “is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county.” (Stats. 1974, ch. 810, § 3, p. 1765.) The express “purpose and intent” of the act that contained former subdivision (c) was “to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled.” (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,²⁹ former subdivision (c) “[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county.” (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.)

Summary Dig., p. 130; see also *Gardner v. County of Los Angeles*, *supra*, 34 Cal.App.4th at p. 216; *106 *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided “be comparable to that enjoyed by the nonindigent”].³⁰ “For the 1990-91 fiscal year,” the Legislature qualified this obligation by providing: “nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs.” (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied

with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.³¹

VI. Minimum Required Expenditure


(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least \$41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on Welfare and Institutions Code section 16990, subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's “ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award.” *107

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at Rev. & Tax. Code, § 30121 et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services.

(*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 248, 254 [*279 Cal.Rptr. 325, 806 P.2d 1360*].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, “at a minimum,” to “maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year,” adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least \$41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds “for allocation to counties *participating* in” the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments “upon application of the county assuring that it will comply with” applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: “To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988.” (Stats. 1989, ch. 1331, § 9, p. 5431.)


However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through Revenue and Taxation Code section 30125, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 “shall be used to supplement existing levels of service and not to fund existing levels of service.” (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to ***108** seek CHIP funds did so voluntarily.³² Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.






Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally “establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA).” (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under  section 16703 for fiscal year 1988-1989.³³ Nothing

about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a \$41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., §§ 10000, 17000, and Health & Saf. Code, § 1442.5, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. ***109**

VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under Code of Civil Procedure section 1085 was an improper vehicle for challenging the Commission's position. It asserts that, under Government Code section 17559, review by administrative mandamus under  Code of Civil Procedure section 1094.5 is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under Code of Civil Procedure section 1085 because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. “[M]andamus pursuant to  [Code of Civil Procedure] section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]” ( *Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [ 170 Cal.Rptr. 484, 620 P.2d 1032].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under Code of Civil Procedure section 1085 as one brought under  Code of Civil Procedure section 1094.5 and should deny a demurrer asserting that the wrong mandamus statute has been invoked. ( *Woods, supra*, 28 Cal.3d at

pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162]. Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial courts' ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal...." (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman, supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment...; no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh, supra*, 14 Cal.App.4th at p. 1584.)

As the state concedes, even under Code of Civil Procedure section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. *110

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under Code of Civil Procedure section 170.6. We will not review this ruling, however, because it is reviewable only by writ of mandate under Code of Civil Procedure section 170.3, subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under Code of Civil Procedure section 904.1, subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.³⁴ (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256

Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d]" and replace[d]" the preliminary injunction order and (2) entry of final judgment. (*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc., supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial courts' reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed]" jurisdiction to determine any right to and amount of attorneys' fees...." This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is *III remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Well. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J., * and Aldrich, J., †
[] concurred.

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new

program or higher level of service on any local government,” the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state “may, but need not,” provide such reimbursement *if the state mandate was enacted before January 1, 1975*. (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (□ *Mooney v. Pickett* (1971) 4 Cal.3d 669, 677-678 *112 [□ 94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: “Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (□ *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [□ 254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor “were provided in different ways and were funded by the state, county, and federal governments in varying amounts.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (□ 42 U.S.C. § 1396 et seq.; see □ *Morris v. Williams* (1967) 67 Cal.2d 733, 738 [□ 63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons “linked” to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called “noncategorically linked” persons, or “medically indigent persons.” (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) *113 Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of “medically indigent persons” that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties

through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category “to the extent that state funds are provided” (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of “medically indigent persons” from Medi-Cal eligibility mandated a “new program or higher level of service” within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. *114 The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against

the state for reimbursement of the county's expenditures for medical care to the indigent.¹ The majority holds that the county is entitled to such reimbursement. I disagree.

II

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: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*” (Italics added.)²

Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Vioria* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of “[l]egislative mandates enacted prior to January 1, 1975,” rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of “medically indigent persons” from Medi-Cal did not meet California Constitution, article XIII B, section 6 's requirement of imposing on local government “a new program or higher level of service,” and therefore did not entitle the counties to reimbursement from the state under section 6 of article XIII B. The counties' legal obligation to provide medical care arises from section 17000, not from the subsequently enacted *115 1982 legislation. The majority itself concedes that the 1982 legislation merely “trigger[ed] the counties' responsibility to provide medical care as providers of last resort under section 17000.” (Maj. opn., *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under section

17000 to furnish such care. (Cooke v. Superior Court (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; Madera Community Hospital v. County of Madera (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on *116 the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal

[that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id.*, § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal.

(See *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees.*" (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources

prove insufficient to *117 reimburse the counties under section 6 of article XIII B of the California Constitution for the “new program or higher level of service” of providing medical care to the poor under section 17000. In that event, the state may be required to modify this “new program or higher level of service” in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file “in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (Gov. Code, § 17612, subd. (c); see maj. opn., *ante*, at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's assumption

thereafter of some of the resulting financial burden to the counties did not repeal section 17000's mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing *118 and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their section 17000 obligations to provide for the poor, and whether to continue to impose the obligations of section 17000 on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under section 17000, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. *119

Footnotes

- * Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- * Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- † Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- 1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.
- 2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, *The Medi-Cal Program: A Brief Summary of Major Events* (Mar. 1990) p. 1 (Summary of Major Events).)


- 3 Former section 14150.1 provided in relevant part: “[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)
- 4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, “a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals Financial responsibility for nonlinked individuals ... remained with the counties.” (█ *Lackner, supra*, 97 Cal.App.3d at p. 581.)
- 5 In this opinion, the terms “adult MIP’s” and “Medically Indigent Adults” refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.
- 6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.
- 7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)
- 8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would “cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal” that “[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.” (█ Rev. & Tax. Code, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.
- 9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to “the state” include these officers.
- 10 The judgment dismissed all of San Diego's other claims.
- 11 In █ *Garamendi, supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.
- 12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego “might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim.”
- 13 “County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents.” (█ *Mooney v. Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

- 14 See also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526] (construing former section 2500); *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [212 Cal.Rptr. 134] (counties must support all indigent persons “having no other means of support”); *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [196 Cal.Rptr. 602]; *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [128 Cal.Rptr. 261] (counties have duty of support “where such support is not otherwise furnished”).
- 15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and *Cooke, supra*, 213 Cal.App.3d 401. (Dis. opn., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons “meeting all eligibility standards for the Medi-Cal program.” (*Madera, supra*, 155 Cal.App.3d at p. 150.) The court explained: “Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents.” (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are “indigent” within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera's* holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (*Madera, supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that “[t]he county obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal.” (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs “alleviate, to a greater or lesser extent, [a] [c]ounty's burden.” (*Madera, supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (*Cooke, supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.
- 16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.
- 17 Because *County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.
- 18 The state properly does not contend that the provision of medical care to adult MIP's is not a “program” within the meaning of section 6. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 56 [section 6 applies to “programs that carry out the governmental function of providing services to the public”].)
- 19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing section 17000 programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 56 [“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' ”].)
- 20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that “whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state.” (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility

before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.


21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000 and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

22 Section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

23 We disapprove  *Bay General, supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under section 17000 extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of section 17000 but do not qualify for Medi-Cal.






24 Our conclusion is limited to this aspect of a county's duty under section 17000. We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under section 17000.


25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)

26 Given our analysis, we express no opinion about the statement in  *Cooke, supra*, 213 Cal.App.3d at page 412, footnote 9, that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute"

27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under section 17000. On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under section 17000 extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

28 The state argues that former subdivision (c) is irrelevant to our determination because, like section 17000, it "predate[d] 1975." Our previous analysis rejecting this argument in connection with section 17000 applies here as well.

- 29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.
- 30 We disapprove *Cooke, supra*, 213 Cal.App.3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely “a limitation on a county’s ability to close facilities or reduce services provided in those facilities,” and was irrelevant absent a claim that a “county facility was closed [or] that any services in [the] county ... were reduced.” Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.
- 31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego’s CMS program exceeded statutory requirements.
- 32 Consistent with the electorate’s direction, in its application for CHIP funds, San Diego assured the state that it would “[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service” Because San Diego’s initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.
- 33 Former section 16991, subdivision (a)(5), provided in full: “If the sum of funding that a county received from its allocation pursuant to  Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to  Section 16703 in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the sum of funding received from its allocation, pursuant to  Section 16703 and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to  Section 16703 in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.” (Stats. 1989, ch. 1331, § 9, p. 5428.)
- 34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.
- * Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- † Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- 1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn.,  *ante*, at pp. 86-90.)
- 2 Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words “such subvention” in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [County of Sonoma v. Commission on State Mandates](#),
Cal.App. 1 Dist., November 21, 2000
53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92
Supreme Court of California

COUNTY OF FRESNO, Plaintiff and
Appellant,
v.
THE STATE OF CALIFORNIA et al.,
Defendants and Respondents.

No. S015637.
Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under [Cal. Const., art. XIII B, § 6](#) (state must provide subvention of funds to reimburse local governments for costs of state- mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under [Gov. Code, § 17556, subd. \(d\)](#), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that [Gov. Code, § 17556, subd. \(d\)](#), was facially constitutional under [Cal. Const., art. XIII B, § 6](#). It held [art. XIII B](#) was not intended to reach beyond taxation, and [§ 6](#) was included in [art. XIII B](#) in recognition that [Cal. Const., art. XIII A](#), severely restricted the taxing powers of local governments. It held that [art. XIII B, § 6](#) was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues.

Accordingly, the court held that [Gov. Code, § 17556, subd. \(d\)](#), effectively construed the term “cost” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, *483 Panelli, Kennard, JJ., and Best (Hollis G.), J.,* concurring. Separate concurring opinion by Arabian, J.)

HEADNOTES

Classified to California Digest of Official Reports

⁽¹⁾
State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by [Cal. Const., art. XIII B, § 6](#), to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)), the trial court properly found that [Gov. Code, § 17556, subd. \(d\)](#) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. [Cal. Const., art. XIII B](#), was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. [Gov. Code, § 17556, subd. \(d\)](#), effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, [Gov. Code, § 17556, subd. \(d\)](#), is facially constitutional under [Cal. Const., art. XIII B, § 6](#).

[See [Cal.Jur.3d \(Rev\), Municipalities, § 361](#); 9 [Witkin, Summary of Cal. Law \(9th ed. 1988\) Taxation, § 124](#).]

COUNSEL

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B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. *484

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MOSK, J.

We granted review in this proceeding to decide whether [section 17556](#), subdivision (d), of the [Government Code](#) ([section 17556\(d\)](#)) is facially valid under [article XIII B, section 6](#), of the [California Constitution](#) ([article XIII B, section 6](#)).

[Article XIII B, section 6](#), 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.”

The Legislature enacted [Government Code](#) [sections 17500 through 17630](#) to implement [article XIII B, section 6](#). ([Gov. Code, § 17500](#).) It created a “quasi-judicial body” (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to “hear and decide upon [any] claim” by a local government that the local government “is entitled to be reimbursed by the state for costs” as required by [article XIII B, section 6](#). ([Gov. Code, § 17551, subd. \(a\)](#).) It defined “costs” as “costs mandated by the state”—“any increased costs” that the local government “is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program” within the meaning of [article XIII B, section 6](#). ([Gov. Code, § 17514](#).) Finally, in [section 17556\(d\)](#) it declared that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased

level of service.”

For the reasons discussed below, we conclude that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#). *485

I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). ([Health & Saf. Code, § 25500 et seq.](#)) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called “test” or initial claim with the commission ([Gov. Code, § 17521](#)) seeking reimbursement from the State of California (State) under [article XIII B, section 6](#). After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a “new program”; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, [section 17556\(d\)](#) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission’s decision and a declaration that [section 17556\(d\)](#) is unconstitutional under [article XIII B, section 6](#). While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a “program” under the rationale of [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, *inter alia*, that mandate under [Code of Civil Procedure section 1094.5](#) was the County’s sole remedy, and that the commission was the sole properly named respondent. It also determined that [section 17556\(d\)](#) is constitutional under [article XIII B, section 6](#). It did not address the

question whether the Act constituted a “program” under *County of Los Angeles*. Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a “program” under *County of Los Angeles, supra*, 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6. *486

(¹) We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitutional under article XIII B, section 6.

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new “special taxes.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

“Articles XIII A and XIII B work in tandem, together restricting California governments’ power both to levy and to spend [taxes] for public purposes.” (*City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide “permanent protection for taxpayers from excessive taxation” and “a reasonable way to provide discipline in tax spending at state and local levels.” (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an “appropriations limit” for both state and local

governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no “appropriations subject to limitation” in excess thereof (*id.*, § 2). (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 446.) It defines the relevant “appropriations subject to limitation” as “any authorization to expend during a fiscal year the proceeds of taxes” (Cal. Const., art. XIII B, § 8, subd. (b).) It defines “proceeds of taxes” as including “all tax revenues and the proceeds to ... government from,” *inter alia*, “regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service” (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such “excess” proceeds from “licenses,” “charges,” and “fees” “are but *487 taxes” for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 “would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.” (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the

statute provides that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Considered within its context, the section effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

The County argues to the contrary. It maintains that [section 17556\(d\)](#) in essence creates a new exception to the reimbursement requirement of [article XIII B, section 6](#), for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting [section 17556\(d\)](#) the Legislature created a new exception to the reimbursement requirement of [article XIII B, section 6](#). As explained, the Legislature effectively—and properly—construed the term “costs” as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, [section 17556\(d\)](#) is indeed inconsistent with [article XIII B, section 6](#). Its contention is in substance as follows: the source of [section 17556\(d\)](#) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into [article XIII B, section 6](#), but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a “self-financing” provision; and such an intent is confirmed by the “legislative history” set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters’ Intent: “the state may not arbitrarily declare that it is not going to comply with [Section 6](#) ... if the state provides new compensating revenues.”

In our view, the County’s argument is unpersuasive. Even

if we assume *arguendo* that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra*, 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the “legislative history” cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: “Based on the authority of [[section 17556\(d\)](#)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program.” *489

The County appears to be making one or both of the following arguments: (1) the commission applies [section 17556\(d\)](#) in an unconstitutional manner; or (2) the Act’s self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of [section 17556\(d\)](#) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of [section 17556\(d\)](#).

III. Conclusion

For the reasons set forth above, we conclude that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J.,* concurred.

ARABIAN, J.,

Concurring.

I concur in the determination that [Government Code section 17556, subdivision \(d\)](#)¹ ([section 17556\(d\)](#)), does not offend [article XIII B, section 6, of the California](#)

[Constitution \(article XIII B, section 6\)](#). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

[Article XIII B, section 6](#), unequivocally commands that “the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service” except as specified therein. [Article XIII B](#) does not define this reference to “costs.” (See *Cal. Const.*, art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of “costs mandated by the state” when it created the Commission on State Mandates and enacted procedures intended to implement [article XIII B, section 6](#), more effectively. (See § 17500 *et seq.*) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving [article XIII B, section 6](#) (§ 17556, subds. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from *490 former Revenue and Taxation Code section 2253.2. (§ 17556, subds. (b), (d), (e), & (f).)

The majority find [section 17556](#) valid notwithstanding the mandatory language of [article XIII B, section 6](#), based on the circular and conclusory rationale that “the Legislature effectively—and properly—construed the term ‘costs’ as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach.” (Maj. opn., *ante*, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word “except” should not be necessary to construe the result for what it clearly is. In this circumstance, “I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck.” (*In re Deborah C.* (1981) 30 Cal.3d 125, 141 [177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J).)

Of at least equal importance, [section 17500 et seq.](#) constitutes a legislative implementation of [article XIII B, section 6](#). As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and

forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of [article XIII B, section 6](#), to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. “[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand.” (*Rose v. State of California* (1942) 19 Cal.2d 713, 723 [123 P.2d 505]; see also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that “the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden” (*People v. Coleman* (1854) 4 Cal. 46, 49.) “Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people’s right of initiative and referendum, is vested in the *491 Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, ‘we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.’* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature’s plenary authority: ‘If there is any doubt as to the Legislature’s power to act in any given case, the doubt should be resolved in favor of the Legislature’s action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.’ [Citations.]” (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) “Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]” (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of [article XIII B](#) conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither [section 6](#) nor any other provision of [article XIII B](#) prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra*, 37

Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was “[b]illed as a flexible way to provide discipline in government spending” by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the “appropriations subject to limitations” calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin, supra*, 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] [“ ‘fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of “special taxes” [limited by California Constitution, article XIII A]’ ”]; *Terminal Plaza Corp. v. City* *492 and *County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that “[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending.” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative “Will curb excessive user fees imposed by local government” but “will Not eliminate user fees ...”]; see

County of Placer v. Corin, supra, 113 Cal.App.3d at p. 452.)

“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 those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56; see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) “Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs.” (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure.² (See *493 *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only “to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service”

The self-executing nature of article XIII B does not alter this analysis. “It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]” (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) “ ‘Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.” [Citations.]’ ” (*Id.*, at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not “merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly.” (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates no conflict with the constitutional

directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

“[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, ‘in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow

from the application of those powers and that they do not so apply.’ [Citation.]” (*Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) *494

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.³ Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature’s self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. *495

Footnotes

- * Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.
- * Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.
- 1 Unless otherwise indicated, all further statutory references are to the Government Code.
- 2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 454 [“Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]”].)
- 3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel*, *supra*, 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside*, *supra*, 31 Cal.2d 619.



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55 Cal.App.4th 976

Court of Appeal, Fourth District, Division 1, California.

REDEVELOPMENT AGENCY OF THE CITY OF SAN MARCOS, Plaintiff and Appellant,

v.

CALIFORNIA COMMISSION ON STATE MANDATES, Defendant and Respondent.

California Department of Finance,
Intervener and Respondent.

No. D026195.

|

May 30, 1997.

|

Review Denied Sept. 3, 1997.

Synopsis

City redevelopment agency petitioned for writ of administrative mandamus to challenge decision of Commission on State Mandates that agency was not entitled to reimbursement from state for certain deposits made into housing fund as required by statute. The Superior Court, San Diego **County**, No. 686818, Sheridan E. Reed and Herber B. Hoffman, JJ., denied petition. Agency appealed. The Court of Appeal, [Huffman, J.](#), held that Constitution did not require state to reimburse agency for deposits agency had made of its tax increment financing proceeds.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (9)

[1] States State expenses and charges and statutory liabilities

Determination of whether statutes established mandate under section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is question of law. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

1 Cases that cite this headnote

[2] States State expenses and charges and statutory liabilities

Where substantial evidence test is applied by trial court in reviewing decision of Commission on State Mandates, Court of Appeal is generally confined to inquiring whether substantial evidence supports trial court's findings and judgment; however, Court of Appeal independently reviews trial court's legal conclusions about meaning and effect of constitutional and statutory provisions. [West's Ann.Cal.Gov.Code § 17559.](#)

[3] States State expenses and charges and statutory liabilities

Purpose of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is to preclude state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to constitutional taxing and spending limitations. [West's Ann.Cal. Const. Art. 13B, § 6.](#)

3 Cases that cite this headnote

[4] States State expenses and charges and statutory liabilities

Constitution did not require state to reimburse city redevelopment agency for 20% deposits agency had made, as required by statute, of its tax increment financing proceeds into housing fund for purposes of improving supply of affordable housing; such use of tax increment financing was not "cost" within meaning of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of services. [West's Ann.Cal. Const. Art. 13B, § 6;](#) [West's Ann.Cal.Health & Safety Code §§ 33334.2, 33334.3.](#)

5 Cases that cite this headnote

- [5] **Constitutional Law** 🔑 Nature and scope in general

Constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by language used.

- [6] **States** 🔑 Limitation of use of funds or credit
Taxation 🔑 Power of State

Goals of constitutional provisions pertaining to tax and government spending limitations are to protect California residents from excessive taxation and government spending. 📄 West's Ann.Cal. Const. Art. 13A, § 1 et seq.; 📄 Art. 13B, § 1 et seq.

- [7] **States** 🔑 State expenses and charges and statutory liabilities

Central purpose of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is to prevent state's transfer of cost of government from itself to local level. West's Ann.Cal. Const. Art. 13B, § 6.

1 Cases that cite this headnote

- [8] **States** 🔑 Limitation of use of funds or credit
Tax increment financing is not within scope of article of Constitution setting forth government spending limitations. 📄 West's Ann.Cal. Const. Art. 13B, § 1 et seq.

1 Cases that cite this headnote

- [9] **States** 🔑 State expenses and charges and statutory liabilities

Under section of Constitution requiring state to provide subvention of funds to reimburse local government for costs of state-mandated new program or higher level of services, subvention is required only when costs in question can be

recovered solely from tax revenues; thus, no state duty of subvention is triggered where local agency is not required to expend its proceeds of taxes. West's Ann.Cal. Const. Art. 13B, § 6.

5 Cases that cite this headnote

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Opinion

HUFFMAN, Associate Justice.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov.Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for monies transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code sections 33334.2¹ and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (see fn. 2) The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6).² (Cal. Const., art. XVI, § 16; § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (📄 Code Civ. Proc., § 1094.5; Gov.Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the

scope of section 6, as not constituting “proceeds of taxes” which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for low and moderate income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

****272** The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm.

*980 I

Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (*Gov.Code, § 17500 et seq.*)³ The Commission hearing consisted of oral argument on the points and authorities presented.

[1] [2] Under *Government Code section 17559*, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. “The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) On appellate review, we apply these standards:

“*Government Code section 17559* governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court’s findings and judgment. [Citation.] However, we independently review the superior court’s legal conclusions about the meaning and effect of constitutional and statutory provisions.

[Citation.]” (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)

II

Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court’s recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here:

“Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which ‘imposes a limit on the power of state and local governments to *981 adopt and levy taxes. [Citation.]’ [Citation.] The next year, the voters added article XIII B to the Constitution, which ‘impose[s] a complementary limit on the rate of growth in governmental spending.’ [Citation.] These two constitutional articles ‘work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.’ [Citation.] Their goals are ‘to protect residents from excessive taxation and government spending. [Citation.]’ [Citation.]” (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80–81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

Section 6, part of article XIII B and the provision here at issue, requires that 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...” (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312, italics added.) Certain exceptions are then stated, none of which is relevant here.⁴

****273** [3] In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, 61 Cal.Rptr.2d 134, 931 P.2d 312, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B.

(**County** of San Diego v. State of California, *supra*, at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d *982

100, 106, **211** Cal.Rptr. 133, 695 P.2d 220), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme:

“Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (Health & Saf.Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, **county**, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency.

(Health & Saf.Code, §§ 33640, 33641, **33670**, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)” (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016–1017, 214 Cal.Rptr. 626.)⁵

In *Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pages 1016–1018, 214 Cal.Rptr. 626, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute “proceeds of taxes” subject to article XIII B appropriations limits. (***274** *Brown v. Community Redevelopment Agency, supra*, at p. 1019, 214 Cal.Rptr. 626).⁶ This ruling was based on section 33678, providing in pertinent part:

“This section implements and fulfills the intent ... of Article XIII B and Section 16 of Article ***983** XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in **subdivision (b) of Section 33670** for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ... or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*” (Italics added.)

In **County** of Placer v. Corin (1980) 113 Cal.App.3d 443, 451, 170 Cal.Rptr. 232, the court defined “proceeds of taxes” in this way:

“Under article XIII B, with the exception of state subventions, the items that make up the scope of “ ‘proceeds of taxes’ ” concern charges levied to raise *general revenues* for the local entity. “ ‘Proceeds of taxes,’ ” in addition to ‘all tax revenues’ includes ‘proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such

proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service. ...' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but taxes for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*" (Italics added.)⁷

In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and *984 accordingly we need not discuss the alternate grounds of decision stated by the Commission.⁸

III

Housing Fund Allocations: Reimbursable Costs?

1. Arguments

[4] The Agency takes the position that the language of section 33678 is simply inapplicable **275 to its claim for subvention of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante*.) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, *for purposes of appropriations limitations*, tax increment financing is not

deemed to be the "proceeds of taxes." (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1017-1020, 214 Cal.Rptr. 626.) The Agency would apply a "plain meaning" rule to section 6 (see, e.g., *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234, 272 Cal.Rptr. 139, 794 P.2d 897) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 "was designed to protect the tax revenues of local governments from state mandates that *985 would require expenditure of such revenues." (*County of Fresno v. State of California*, *supra*, at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) Based on the language and history of the measure, the court stated, "Article XIII B of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*Ibid.*, original italics.) Interpreting section 6, the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. Interpretation of Section 6

[5] Here, the Agency contends the authority of *County of Fresno v. State of California*, *supra*, 53 Cal.3d 482, 280 Cal.Rptr. 92, 808 P.2d 235, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of

section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read [section 6](#) in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of [section 6](#), because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (City of San Jose v. State of California, *supra*, 45 Cal.App.4th at pp. 1816–1817, 53 Cal.Rptr.2d 521.)

[6] [7] The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (County of Los Angeles v. State of California, *supra*, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) A central purpose of [section 6](#) is to prevent the state's transfer of the cost of government from itself to the local level. (City of Sacramento v. State of California, *supra*, 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) The related goals of these enactments require us to ****276** read the term “costs” in [section 6](#) in light of the enactment as a whole. The “costs” for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the ***986** assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016–1017, 214 Cal.Rptr. 626.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which [section 6](#) was designed to protect? (County of Fresno v. State of California, *supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.)

3. Relationship of Appropriations Limitations and Subvention

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at page 447, 170 Cal.Rptr. 232, the court described the discipline imposed by article XIII B in this way:

“[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on ‘appropriations subject to limitation,’ which consists primarily of the authorization to expend during a fiscal year the ‘proceeds of taxes.’ (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute ‘proceeds of taxes.’”⁹

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” (*County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451, 170 Cal.Rptr. 232, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [sections 33334.2 and 33334.3](#). (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially ***987** responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817, 38 Cal.Rptr.2d 304.)¹⁰

[8] [9] For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under [section 6](#) for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency*, ****277** *supra*, 168 Cal.App.3d at pp. 1016–1020, 214 Cal.Rptr. 626.) Section 6 “requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax

increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6. We therefore need not interpret any remaining portions of section 6.

DISPOSITION

The judgment is affirmed.

WORK, Acting P.J., and McINTYRE, J., concur.

All Citations

55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

Footnotes

- 1 All further statutory references are to the Health and Safety Code unless otherwise noted.
- 2 “ ‘Subvention’ generally means a grant of financial aid or assistance, or a subsidy. [Citation.]” (Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1577, 15 Cal.Rptr.2d 547.)
- 3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (Redevelopment Agency v. Commission on State Mandates (1996) 43 Cal.App.4th 1188, 1194–1199, 51 Cal.Rptr.2d 100.) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.
- 4 Section 6 lists the following exclusions to the requirement for subvention of funds: “(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.” In City of Sacramento v. State of California (1990) 50 Cal.3d 51, 69, 266 Cal.Rptr. 139, 785 P.2d 522, the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov.Code, § 17514, definition of “costs mandated by the state,” using the same “new program or higher level of service” language of section 6.)
- 5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of low- and moderate-income housing, as well as expanding employment opportunities and improving the social environment.
- 6 The term of art, “proceeds of taxes,” is defined in California Constitution, article XIII B, section 8, as follows:
 - (c) “ ‘Proceeds of taxes’ shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, ‘proceeds of taxes’ shall include

subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions.” (Italics added.)

- 7 The issues before the court in [County of Placer v. Corin, supra](#), 113 Cal.App.3d 443, 170 Cal.Rptr. 232 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. Section 6 is not discussed; the court’s analysis of other concepts found in article XIII B is nevertheless instructive.
- 8 The alternate grounds of the Commission’s decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated “new program or higher level of service” under this section.
- 9 The term of art, “appropriations subject to limitation,” is defined in the [California Constitution, article XIII B, section 8](#), as follows: [(f)](b) “ ‘Appropriations subject to limitation’ of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.” (Italics added.)
- 10 We disagree with respondents that the legislative history of [sections 33334.2 and 33334.3](#) is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats.1976, ch. 1337, § 23.) As stated in [City of San Jose v. State of California, supra](#), 45 Cal.App.4th at pages 1817–1818, [53 Cal.Rptr.2d 521](#), legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.



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54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66
Supreme Court of California

FRANCES KINLAW et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et
al., Defendants and Respondents.

No. S014349.

Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to Code Civ. Proc., § 526a, against the state, alleging that it had violated Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature (Gov. Code, § 17500 et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under Cal. Const., art. XIII B, § 6, were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES**Classified to California Digest of Official Reports**

(1)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.

Gov. Code, § 17500 et seq., creates an administrative forum for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, and establishes *327 procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (Gov. Code, § 17612). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6.

(2)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.

In an action by medically indigent adults and taxpayers seeking to enforce Cal. Const., art. XIII B, § 6, for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy (Gov. Code, § 17500 et seq.) by which affected local agencies could enforce their constitutional right under art. XIII B, § 6 to reimbursement for the cost of state mandates did not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under art. XIII B, § 6; unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further

action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See **Cal.Jur.3d**, State of California, § 78; 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1127 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

COUNSEL

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John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of article XIII B (hereafter, section 6) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to Code of Civil Procedure section 526a and as persons affected by the alleged failure of the state to comply with section 6. The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under section 6 are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

Section 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: *329

“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.”

A complementary provision, section 3 of article XIII B, provides for a shift from the state to the local agency of a portion of the spending or “appropriation” limit of the state when responsibility for funding an activity is shifted to a local agency:

“The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.”

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services

to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time section 6 was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly *330 situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi-Cal program to the counties without adequate reimbursement violated the California Constitution.¹

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission).²

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of section 6. Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of section 6.³ *331

III Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6. (§ 17500.) The Legislature did so because the absence

of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in section 17500:

“The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*” (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, “State-Mandated Costs,” which commences with section 17500, the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state-mandated program (§§ 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. (§ 17525.)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554),⁴ establishes the method of *332 payment of claims (§§ 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates (§§ 17562, 17600, 17612, subd. (a).)

Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies⁵ and school districts⁶ are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided only through this statutory procedure. (§§ 17550, 17552.)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a “test claim.” (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting “parameters and guidelines” for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations *333 bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subs. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a “local government claims bill.” If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in section 17500: “It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ...” And section 17550 states: “Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter.”

Finally, section 17552 provides: “This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.” (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6. *334

IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under section 6 to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge.

(*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]; *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]; *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of section 6 independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. Section 6 provides that the “state shall provide a subvention of funds to reimburse ... local governments” (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement section 6. That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under section 6. Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost *335 of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of

any kind. Nothing in article XIII B or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: “Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose.”

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under section 6. That test-claim statute expressly provides that not only the claimant, but also “any other interested organization or individual may participate” in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must “provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person.” (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive.⁷

The alternative relief plaintiffs seek—reinstatement to Medi-Cal pending further action by the state—is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists *336 and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.)⁸

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the

question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard.⁹

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the *337 Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442

[279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs—citizens, taxpayers, and persons in need of medical care—allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned *338 itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds.¹

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about \$40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than \$20 million per year. The county has inadequate funds to discharge its new obligation

for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated" "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need" "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people"

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of article XIII B, and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of article XIII B, which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda *339 County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with article XIII B.

Plaintiffs first claim standing as taxpayers under Code of Civil Procedure section 526a, which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against

any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..." As in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates article XIII B. A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9 [270 Cal.Rptr. 796, 793 P.2d 2], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under article XIII B. The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce section 6 of article XIII B.

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.² Such an action may be brought by any person "beneficially interested" in the issuance of the writ. (Code Civ. Proc., § 1086.) In *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, *Administrative Law Treatise* (1958) p. 291.) Cases applying this standard include *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520

[170 Cal.Rptr. 724], which held that low-income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner v. City Council*, supra, 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: *Carsten v. Psychology Examining Com.*, supra, 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; *Parker v. Bowron* (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, *341 plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under Government Code section 17563 "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention.³

This argument would be sound if the county were already meeting its obligations to MIA's under Welfare and Institutions Code section 17000. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by Welfare and Institutions Code section 17000, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under section 17000 of the Welfare and Institutions Code. If it refused, an action in mandamus would lie to compel performance. (See *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with article XIII B ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right *342 and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

Green v. Obledo presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that “[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety.” (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo*, *supra*, 29 Cal.3d 126, 144, and concluded that “[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication.” (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to “hear and decide upon [any] claim” by a local government that it “is entitled to be reimbursed by the state” for costs under article XIII B. (*343 Gov. Code, § 17551, subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is

expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.⁴ I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that “[t]his chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.” (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that “any other interested organization or individual may participate” in the commission hearing. Under these circumstances the Legislature’s choice of words—“the sole and exclusive procedure by which a local agency or school district may claim reimbursement”—limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*—“the expression of certain things in a statute necessarily involves exclusion of other things not expressed.” (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432. Here defendants contend that the counties’ right of action under Government Code sections 17551-17552 impliedly excludes *344 any citizen’s remedy; in *Common Cause* defendants claimed the Attorney General’s right of action under Elections Code section 304 impliedly excluded any citizen’s remedy. We replied that “the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a ‘public interest’ exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations].” (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that “[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program.” (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, article XIII B was enacted to protect taxpayers, not governments. Sections 1 and 2 of article XIII B establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. Section 6 of article XIII B prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce article XIII B, and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to article XIII B. The drafters of article XIII B and the voters who enacted it would not accept that the state Legislature—the principal body regulated by the article—could establish a procedure ***345** under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce article XIII B. An example is the Brown-Presley Trial Court Funding Act (Gov. Code, § 77000 et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be

deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation.⁵ The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of article XIII B.

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to ***346** determine the amount of the mandate—which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation—in this case, the medically indigent—and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent decision in *Dix v. Superior Court, supra*, 53 Cal.3d 442 (hereafter *Dix*). In *Dix*, the victim of a crime sought to challenge the trial court's decision to recall a sentence under Penal Code section 1170. We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning the trial court's authority to recall a sentence under Penal Code section 1170, subdivision (d). We explained that the

sentencing issues “are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]” (53 Cal.3d at p. 454.) In footnote we added that “Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues—standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision.” (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix*. The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante*, p. 330, fn. 2 *ante*, p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. *347

The majority, however, notes that various state officials—the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research—did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante*, p. 336, fn. 9 *ante*, p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae.⁶

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix*. Judges rarely recall sentencing under Penal Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal

issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. Conclusion as to standing.

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude *348 that plaintiffs have standing both as persons “beneficially interested” under Code of Civil Procedure section 1086 and under the doctrine of *Green v. Obledo*, *supra*, 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. State funding of care for MIA's.

Welfare and Institutions Code section 17000 requires every county to “relieve and support” all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources.⁷ From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully met through other sources, the counties had no duty under Welfare and Institutions Code section 17000 to meet those

needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time article XIII B became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when article XIII B became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was *349 initially relatively constant, generally more than \$400 million per year. By 1990, however, state funding had decreased to less than \$250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its article XIII B "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About \$1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. The function of article XIII B.

Our recent decision in *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the function of article XIII B and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*)).

"At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amendments, Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument *350 in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.*, § 2).⁸ (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes ...' (Cal. Const., art. XIII B, § 8, subd. (b).)" (*County of Fresno, supra*, 53 Cal.3d at p. 486.)

Under section 3 of article XIII B the state may transfer financial responsibility for a program to a county if the state and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount.⁹ Absent such an agreement, however,

section 6 of article XIII B generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of article XIII B. It does so by requiring that “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 cost of such program or increased level of service”¹⁰

“Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno, supra*, 53 Cal.3d at p. 487.)

C. Applicability of article XIII B to health care for MIA's.

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any “new program” or “higher level of service” on the counties within the meaning of section 6 of article XIII B. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when article XIII B took effect. The purpose of article XIII B supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and article XIII B are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. Article XIII B, enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not

county financing for these programs. Article XIII B further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that article XIII B was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under article XIII B, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when article XIII B was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of article XIII B.

Our decisions interpreting article XIII B demonstrate that the state's subvention requirement under section 6 is not vitiated simply because the “program” existed before the effective date of article XIII B. The alternate phrase of section 6 of article XIII B, “‘higher level of service[.]’ ... 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.’*” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility

continued until June 28, 1981, when Education Code section 59300 (hereafter section 59300), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under section 6 of article XIII B. The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by section 59300 imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that section 59300 called for only an “adjustment of costs” of educating the severely handicapped, and that “*a shift in the funding of an existing program is not a new program or a higher level of service*” within the meaning of article XIII B. (Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. “[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing *353 power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control¹¹ of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIII B because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*” (Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830: “[B]ecause section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—*an obligation the school districts did not have at the time article XIII B was adopted*—it calls for plaintiffs to support a 'new program' within the meaning of section 6.” (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the “program” requiring school district funding in that case *was not required by statute* at the effective date of *354 article XIII B. The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been “temporarily”¹² suspended when article XIII B became effective. I fail to see the distinction between a case—*Lucia Mar*—in which no existing statute as of 1979 imposed an obligation on the local government and one—this case—in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of section 6 of article XIII B does not depend upon when the program was created, but upon who had the burden of funding it when article XIII B went into effect. Our conclusion in *Lucia Mar* that the educational program there in issue was a “new” program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor.

Lucia Mar determined that whether the program was new as to the districts depended on when they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal.¹³ Both are correct, but irrelevant to this case.¹⁴ The county's obligation to MIA's is defined by Welfare and Institutions Code section 17000, not by the former Medi-Cal program.¹⁵ If the *355 state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately \$1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to sections 1 and 3 of

article XIII B. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of article XIII B which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce article XIII B both to those persons whom it was designed to protect—the citizens and taxpayers—and to those harmed by its violation—the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate article XIII B and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. *356

Footnotes

- 1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce section 6.
- 2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (Code Civ. Proc., § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)
- 3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of

their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.

An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce section 6.

All further statutory references are to the Government Code unless otherwise indicated.

4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)

5 " 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

6 " 'School district' means any school district, community college district, or county superintendant of schools." (§ 17519.)

7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of section 6 before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because section 6 creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action. (See, e.g., *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action." (Maj. opn., ante, p. 336, fn. 8; ante, p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 56 [107 Cal.Rptr. 214] (overruled on other grounds in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by

the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 127-128 [109 Cal.Rptr. 724].)

3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

4 The majority emphasizes the statement of purpose of Government Code section 17500: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under section 6 of article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."

The "existing system" to which Government Code section 17500 referred was the Property Tax Relief Act of 1972 (Rev. & Tax. Code, §§ 2201-2327), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)

"As used in this chapter, 'state-mandated local program' means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution, or Section 17561 of the Government Code, or both." (Gov. Code, § 77005, italics added.)

6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of

Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

7 Welfare and Institutions Code section 17000 provides that “[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.”

8 Article XIII B, section 1 provides: “The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article.”

9 Section 3 of article XIII B reads in relevant part: “The appropriations limit for any fiscal year ... shall be adjusted as follows:

“(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ...”

10 Section 6 of article XIII B further provides 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.” None of these exceptions apply in the present case.

11 The state notes that, in contrast to the program at issue in *Lucia Mar*, it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar*, while appropriate to the facts of that case, was not intended to establish a rule limiting article XIII B, section 6, to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

12 The state's repeated emphasis on the “temporary” nature of its funding is a form of post hoc reasoning. At the time article XIII B was enacted, the voters did not know which programs would be temporary and which permanent.

13 It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905].)

14 Certain language in *Madera Community Hospital v. County of Madera, supra*, 155 Cal.App.3d 136, however, is questionable. That opinion states that the “Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden.” (P. 151.) Welfare and Institutions Code section 17000 by its terms, however, requires the county to provide support to residents only “when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

15 The county's right to subvention funds under article XIII B arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program “ ‘mandated’ ” by the state; i.e., that Alameda County has any option other than to pay these costs. (*Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 836-837.)

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State of California

BUSINESS AND PROFESSIONS CODE

Section 17500

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

(Amended by Stats. 1998, Ch. 599, Sec. 2.5. Effective January 1, 1999.)

[West's Annotated California Codes](#)

[Government Code \(Refs & Annos\)](#)

[Title 2. Government of the State of California](#)

[Division 4. Fiscal Affairs \(Refs & Annos\)](#)

[Part 7. State-Mandated Local Costs \(Refs & Annos\)](#)

[Chapter 2. General Provisions \(Refs & Annos\)](#)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

[Currentness](#)

“Costs 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](#).

Credits

(Added by Stats.1984, c. 1459, § 1.)


[Notes of Decisions \(16\)](#)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514

Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

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 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by [California School Boards Assn. v. State of California](#), Cal.App. 3 Dist., Mar. 09, 2009

[West's Annotated California Codes](#)

[Government Code \(Refs & Annos\)](#)

[Title 2. Government of the State of California](#)

[Division 4. Fiscal Affairs \(Refs & Annos\)](#)

[Part 7. State-Mandated Local Costs \(Refs & Annos\)](#)

[Chapter 4. Identification and Payment of Costs Mandated by the State \(Refs & Annos\)](#)

[Article 1. Commission Procedure \(Refs & Annos\)](#)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

[Currentness](#)

The commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously 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 that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

Editors' Notes

VALIDITY

A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Assn. v. State of California (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

For state reimbursement provisions relating to Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

For Governor's signing message regarding Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

Urgency effective provisions relating to [Stats.2005, c. 72](#) (A.B.138), see Historical and Statutory Notes under [Elections Code § 13304](#).

[Stats.2006, c. 538](#) (S.B.1852), made nonsubstantive changes to maintain the code.

Subordination of legislation by [Stats.2006, c. 538](#) (S.B.1852), to other 2006 legislation, see Historical and Statutory Notes under [Business and Professions Code § 690](#).

2010 Legislation

For cost reimbursement and urgency effective provisions relating to [Stats.2010, c. 719](#) (S.B.856), see Historical and Statutory Notes under [Business and Professions Code § 154.2](#).

CROSS REFERENCES

“Commission” defined for purposes of this Part, see [Government Code § 17512](#).

“Costs mandated by the federal government” defined for purposes of this Part, see [Government Code § 17513](#).

“Costs mandated by the state” defined for purposes of this Part, see [Government Code § 17514](#).

“Executive order” defined for purposes of this Part, see [Government Code § 17516](#).

Funding included in school safety consolidated competitive grant, see [Education Code § 41511](#).

“Local agency” defined for purposes of this Part, see [Government Code § 17518](#).

Local education agencies, Los Angeles Unified School District, report on illegal activity and enforcement power, see [Education Code § 35401](#).

“School district” defined for purposes of this Part, see [Government Code § 17519](#).

State-mandated special education programs and services; additional revenue, see [Education Code § 56836.156](#).

CODE OF REGULATIONS REFERENCES

Filing request for reimbursement, see 2 Cal. Code of Regs. [§ 1184](#).

RESEARCH REFERENCES

Encyclopedias

38 Cal. Jur. 3d [Incompetent, Addicted, and Disordered Persons § 40](#), Review.

50 Cal. Jur. 3d [Pollution and Conservation Laws § 134](#), State Policy--Coastal Marine Environment Policy.

50 Cal. Jur. 3d [Pollution and Conservation Laws § 168](#), Generally.

50 Cal. Jur. 3d [Pollution and Conservation Laws § 169](#), Construction, Application, and Effect of Compliance Law.

50 Cal. Jur. 3d [Pollution and Conservation Laws § 171](#), Prohibited Discharges.

58 Cal. Jur. 3d [State of California § 100](#), Generally.

58 Cal. Jur. 3d [State of California § 101](#), What Constitutes Reimbursable Mandate.

58 Cal. Jur. 3d [State of California § 103](#), What Constitutes Reimbursable Mandate--Statutory Exclusions.

58 Cal. Jur. 3d [State of California § 104](#), What Constitutes Reimbursable Mandate--Federally Mandated Costs.

58 Cal. Jur. 3d [State of California § 105](#), Resolution of Claims for Reimbursement.

81A [Corpus Juris Secundum States § 329](#), Reimbursable State Mandated Programs.

Treatises and Practice Aids

9 Witkin, California Summary 10th Taxation § 119 (2019), Requirement.

9 Witkin, California Summary 10th Taxation § 120 (2019), Reimbursement Required.

9 Witkin, California Summary 10th Taxation § 123 (2019), Where Expenses Are Recoverable from Sources Other Than Taxes.

9 Witkin, California Summary 10th Taxation § 124 (2019), Local Government's Action to Avoid Expenditure.

Relevant Notes of Decisions (4)

[View all 27](#)

Notes of Decisions listed below contain your search terms.

Validity

This **section** prohibiting commission on state mandates from finding costs mandated by State if it finds that local government has authority to levy service charges, fees, or assessments sufficient to pay for mandated program or increased level of service is facially constitutional under state constitutional provision requiring State to provide subvention of funds to reimburse local government for costs of state-mandated new program or higher level of service; considered in its context, **section** effectively and properly construes term “costs” in constitutional provision as excluding expenses that are recoverable from sources other than taxes. [County of Fresno v. State of California \(1991\) 280 Cal.Rptr. 92, 53 Cal.3d 482, 808 P.2d 235. Taxation 🔑 3237](#)

Construction and application

State Controller's Office had the authority to rely on the **Government Code**, rather than only on the Parameters and Guidelines (P&Gs) adopted by the Commission on State Mandates, to uphold an audit rule excluding the amount of optional fees from the amount recoverable as state-mandated costs. [Clovis Unified School Dist. v. Chiang \(App. 3 Dist. 2010\) 116 Cal.Rptr.3d 33, 188 Cal.App.4th 794, modified on denial of rehearing. States 🔑 111](#)

Ballot initiatives

Sexually Violent Predators Act (SVPA) provisions technically restated, as required by constitution, as part enactment of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law, were not expressly included in a ballot measure approved by the voters within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; restated provisions were not integral to accomplishing the initiative's goals, nor was there any basis for believing that it was within the scope of the voters' intended purpose in enacting the initiative to limit the Legislature's capacity to alter or amend the provisions. [County of San Diego v. Commission on State Mandates \(2018\) 240 Cal.Rptr.3d 52, 430 P.3d 345. States 🔑 111](#)

Constitutionally-required technical reenactment, as part of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law, of Sexually Violent Predators Act (SVPA) provision stating that “[t]he rights, requirements, and procedures set forth in **Section** 6603 shall apply to all commitment proceedings” did not make that **section** “necessary to implement” Proposition 83 within meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties necessary to implement such a ballot measure; question was not whether the protections in that **section** were required by due process, but rather was whether the civil commitment program triggering those procedures was mandated by the state or by the voters. [County of San Diego v. Commission on State Mandates \(2018\) 240 Cal.Rptr.3d 52, 430 P.3d 345. States 🔑 111](#)

§ 17556. Findings; costs not mandated upon certain conditions, CA GOVT § 17556

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
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California Statutes Annotated - 2019

West's Annotated California Codes

Business and Professions Code (Refs & Annos)

Division 7. General Business Regulations (Refs & Annos)

Part 3. Representations to the Public (Refs & Annos)

Chapter 1. Advertising (Refs & Annos)

Article 3. Motel and Motor Court Rate Signs (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 17564

§ 17564. Posting rates; number of units offered at each rate; number of persons accommodated

Currentness

It shall be unlawful for any owner or operator of any establishment within the scope of this article, located within the State of California, to post or maintain posted on any outdoor or outside advertising sign pertaining to such establishment, any rates for accommodations in such establishment unless the sign shall have posted thereon the rates charged for all rooms, or other rental units or accommodations offered for rental, the number of rooms or other rental units offered for rental at each rate, and the number of persons accommodated at the rate posted. All posted rates and descriptive data required by this article shall be in type and material of the same size and prominence as the aforesaid data. This section shall not be held to be complied with by signs stating the rate per person or bearing the legend "and up."

Credits

(Added by Stats.1953, c. 975, § 1. Amended by Stats.1961, c. 1733, § 1.)

VALIDITY

This section was held unconstitutional as a denial of equal protection to motel owners or operators in the decision of Gawzner Corp. v. Minier (App. 2. Dist. 1975), 120 Cal.Rptr. 344, 46 Cal.App.3d 777.

HISTORICAL AND STATUTORY NOTES

2017 Main Volume

The 1961 amendment substituted "the rates charged for all rooms, or other rental units or accommodations offered for rental, the number of rooms or other rental units offered for rental at each rate, and the number of persons accommodated at the rate posted" for "both the minimum and maximum room, or other rental unit rates for accommodations offered for rental" in the first sentence.

CROSS REFERENCES

False or misleading statements in general, see Business and Professions Code § 17500.

Injunctive relief, see Business and Professions Code § 17535.

Person defined for purposes of this Chapter, see Business and Professions Code § 17506.

LIBRARY REFERENCES

2017 Main Volume

Innkeepers § 6, 12.

Westlaw Topic No. 213.

C.J.S. Inns, Hotels, and Eating Places §§ 19 to 22, 26 to 27.

RESEARCH REFERENCES

Encyclopedias

37 Cal. Jur. 3d Hotels and Motels § 19, Hotel Rates or Charges.

California Civil Practice Business Litigation § 61:29, Motel and Motor Court Rates.

Treatises and Practice Aids

California Business Law Deskbook § 33:8, California False Advertising Law ("Fal").

2 Witkin, California Criminal Law 4th Crimes Against Property § 242 (2012), Miscellaneous Topics.

8 Witkin, California Summary 10th Constitutional Law § 784 (2017), Invalid Classifications.

NOTES OF DECISIONS

Construction and application 2

Validity 1

1 Validity

Statutory discrimination in outdoor rate signs provision of this section, which provided that it was unlawful to post or maintain any outdoor or outside advertising sign pertaining to rates for accommodations unless sign also stated rates charged for all rooms, number of rooms offered at each rate, and number of persons accommodated at rate posted, and which applied to owners and operators of motels but not hotels, denied motels equal protection and thus such outdoor rate signs provision was unconstitutional in its application to owners and operators of motels. *Gawzner Corp. v. Minier* (App. 2 Dist. 1975) 120 Cal.Rptr. 344, 46 Cal.App.3d 777. Constitutional Law § 3693; Innkeepers § 2

2 Construction and application

When outdoor rate advertising is used by a motel owner or operator, this section requires full rate disclaimer be made, including every rate at all possible normal levels of occupancy for each room. 56 Op.Atty.Gen. 345, 8-16-73.

West's Ann. Cal. Bus. & Prof. Code § 17564, CA BUS & PROF § 17564

Current with all laws through Ch. 1016 of 2018 Reg.Sess., and all propositions on 2018 ballot.

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California Code, Government Code - GOV § 17573

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[Next » \(https://codes.findlaw.com/ca/government-code/gov-sect-17574.html\)](https://codes.findlaw.com/ca/government-code/gov-sect-17574.html)

(a) Notwithstanding [Section 17551 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc11ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc11ae811e9a89d8c1249eb3)

, the Department of Finance and a local agency, school district, or statewide association may jointly request of the

chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees in each house of the Legislature that consider the State Budget,

that the Legislature (1) determine that a statute or executive order, or portion thereof, mandates a new program or higher level of service requiring reimbursement of local governments pursuant to [Section 6 of Article XIII B of the California Constitution \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e38cc01ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e38cc01ae811e9a89d8c1249eb3)

, (2) establish a reimbursement methodology, and (3) appropriate funds for reimbursement of costs. For purposes

of this section, "statewide association" includes a statewide association representing local agencies or school

districts, as defined in [Sections 17518 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc21ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc21ae811e9a89d8c1249eb3)

and [17519 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc31ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc31ae811e9a89d8c1249eb3)

.

(b) The statute of limitations specified in [Section 17551 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc31ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e38cc31ae811e9a89d8c1249eb3)

shall be tolled from the date a local agency, school district, or statewide association contacts the Department of

Finance or responds to a Department of Finance request to initiate a joint request for a legislatively determined

mandate pursuant to subdivision (a), to (1) the date that the Budget Act for the subsequent fiscal year is adopted if

a joint request is submitted pursuant to subdivision (a), or (2) the date on which the Department of Finance, or a

local agency, school district, or statewide association notifies the other party of its decision not to submit a joint

request. A local agency, school district, or statewide association, or the Department of Finance shall provide

written notification to the commission of each of these dates.

(c) A joint request made under subdivision (a) shall be in writing and include all of the following:

(1) Identification of those provisions of the statute or executive order, or portion thereof, that mandate a new

program or higher level of service requiring reimbursement of local agencies or school districts pursuant to

[Section 6 of Article XIII B of the California Constitution \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e401f01ae811e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e401f01ae811e9a89d8c1249eb3)

, a proposed reimbursement methodology, and the period of reimbursement.

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- (2) A list of eligible claimants and a statewide estimate for the initial claiming period and annual dollar amount necessary to reimburse local agencies or school districts to comply with that statute or executive order that mandates a new program or higher level of service.
- (3) Documentation of significant support among local agencies or school districts for the proposed reimbursement methodology, including, but not limited to, endorsements by statewide associations and letters of approval from local agencies or school districts.
- (d) A joint request authorized by this section may be submitted to the Legislature pursuant to subdivision (a) at any time after enactment of a statute or issuance of an executive order, regardless of whether a test claim on the same statute or executive order is pending with the commission. If a test claim is pending before the commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this section.
- (e)(1) If the Legislature accepts the joint request and determines that those provisions of the statute or executive order, or portion thereof, mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e477201ae811e9a89d8c1249eb>), it shall adopt a statute declaring that the statute or executive order, or portion thereof, is a legislatively determined mandate and specify the term and period of reimbursement and methodology for reimbursing eligible local agencies or school districts. If no term is specified in the statute, then the term shall be five years, beginning July 1 of the year in which the statute is enacted.
- (2) For the purpose of this subdivision, "term" means the number of years specified in the statute adopted pursuant to this subdivision for reimbursing eligible local agencies or school districts for a legislatively determined mandate.
- (f) When the Legislature adopts a statute pursuant to paragraph (1) of subdivision (e) on a mandate subject to subdivision (b) of Section 6 of Article XIII B of the California Constitution (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e4c5401ae811e9a89d8c1249eb3>), the Legislature shall do either of the following:
- (1) Appropriate in the Budget Act the full payable amount for reimbursement to local agencies that has not been previously paid.
- (2) Suspend the operation of the mandate pursuant to Section 17581 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e513601ae811e9a89d8c1249eb>) or repeal the mandate.
- (g) The Department of Finance, or a local agency, school district, or statewide association shall notify the commission of actions taken pursuant to this section, as specified below:
- (1) Provide the commission with a copy of any communications regarding development of a joint request under this section and a copy of a joint request when it is submitted to the Legislature.
- (2) Notify the commission of the date of (A) the Legislature's action on a joint request in the Budget Act, or (B) the Department of Finance's decision not to submit a joint request on a specific statute or executive order.
- (h) Upon receipt of notice that a joint request has been submitted to the Legislature on the same statute or executive order as a pending test claim, the commission may stay its proceedings on the pending test claim upon the request of any party.
- (i) Upon enactment of a statute declaring a legislatively determined mandate, enactment of a reimbursement methodology, and appropriation for reimbursement of the full payable amount that has not been previously paid in the Budget Act, all of the following shall apply:

- (1) The Controller shall prepare claiming instructions pursuant to Section 17558 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e5afa01ae811e9a89d8c1249eb>), if applicable.

(2) The commission shall not adopt a statement of decision, parameters and guidelines, or statewide cost estimate on the same statute or executive order unless a local agency or school district that has rejected the amount of reimbursement files a test claim or takes over a withdrawn test claim on the same statute or executive order.

(3) A local agency or school district accepting payment for the statute or executive order, or portion thereof, that mandates a new program or higher level of service pursuant to [Section 6 of Article XIII B of the California Constitution](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e5d6b01ae811e9a89d8c1249eb) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=lb3e5d6b01ae811e9a89d8c1249eb>) shall not be required to submit parameters and guidelines if it is the successful test claimant pursuant to [Section 17557](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e5d6b11ae811e9a89d8c1249eb) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb3e5d6b11ae811e9a89d8c1249eb>)

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Read this complete California Code, Government Code - GOV § 17573 on Westlaw ([https://1.next.westlaw.com/Document/ICC7D056030DA11E98C61BF2AFCE12A9D/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/ICC7D056030DA11E98C61BF2AFCE12A9D/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))).

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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 November 9, 2022, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued November 9, 2022**
- **Test Claim filed by the County of Los Angeles on June 29, 2022**

Sex Offenders Registration: Petitions for Termination, 21-TC-03
Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018,
operative July 1, 2021
County of Los Angeles, 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 November 9, 2022 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/9/22

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

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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