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State of California  
COMMISSION ON STATE MANDATES  
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Sacramento, CA 95814  
(916) 323-3562  
CSM 1 (2-91)

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|-----------------------|
| For Official Use Only |
|                       |
| Claim No. 97-238-01   |

TEST CLAIM FORM

Local Agency or School District Submitting Claim

THE CITY OF SAN DIEGO

Contact Person

Telephone No.

Debra J. Bevier, Deputy City Attorney

( 619 ) 533-5889

Address

Office of The City Attorney  
1200 Third Ave., Suite 1200  
San Diego, CA 92101

Representative Organization to be Notified

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable. Chapter 7 - Senate Bill No. 821. An Act to amend Section 1263.320 of, and to add Sections 1235.155 and 1263.321 to, the Code of Civil Procedure, to amend Section 823 of, and to add Section 824 to, the Evidence Code, and to add Section 7267.9 to the Government Code, relating to public property acquisitions.

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Debra J. Bevier, Deputy City Attorney

( 619 ) 533-5889

Signature of Authorized Representative

Date

*Debra J. Bevier*

8/15/97



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

|                       |   |   |
|-----------------------|---|---|
| Test Claim of:        | ) | No. CSM _____                                       |
|                       | ) |   |
| The City of San Diego | ) | Senate Bill 821 wherein                             |
|                       | ) | Code of Civil Procedure sections                    |
|                       | ) | 1235.155 & 1263.321 were added                      |
|                       | ) | and section 1263.320 was amended;                   |
|                       | ) | Evidence Code section 824 was                       |
|                       | ) | added and section 823 was amended;                  |
|                       | ) | and Government Code 7267.9 was added                |
|                       | ) |   |
|                       | ) | <i>Nonprofit, Special Use Property Requirements</i> |
|                       | ) |   |

I. AUTHORITY FOR THE CLAIM

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

II. IDENTIFICATION OF THE SECTIONS CONTAINING THE MANDATE

The mandate discussed in this test claim is contained in Senate Bill 821. A copy of Senate Bill 821 is attached as Exhibit A-1.

III. IDENTIFICATION OF CONSTITUTIONAL PROVISIONS, FEDERAL REQUIREMENTS AND COURT DECISIONS AFFECTING THE MANDATE

There are no state constitutional provisions which impact the mandate. There are no federal statutes or executive order which impact the mandate. Except as set forth in Section IV below, there are no court decisions which impact the mandate.

#### IV. DESCRIPTION OF MANDATED ACTIVITIES

##### A. Requirements Under Prior Law

Prior to the enactment of Senate Bill 821, "nonprofit, special use properties," such as churches, schools, etc., were valued utilizing the same methodologies as all other properties being condemned; using one or more of the three (3) standard appraisal methods (comparable sale, income and cost methods) -- there was no special designation separating these properties apart from any other type of real property.

##### B. Requirements of the New Mandate

With the enactment of Senate Bill 821 (see Exhibit A-1), Code of Civil Procedure Sections 1235.155 and 1263.321 were added and Section 1263.320 was amended (see Exhibit A-2); Evidence Code Section 824 was added and Section 823 was amended (see Exhibit A-3); and Government Code 7267.9 was added (see Exhibit A-4). These added/amended code sections now require that "if there is no relevant, comparable market" the value of "nonprofit, special use properties" be determined in the manner set forth in Evidence Code Section 824. Evidence Code Section 824 states in part as follows:

(a) Notwithstanding any other provision of this article, a just and equitable method of determining the value of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, is the cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements. The method for determining compensation for improvements shall be as set forth in subdivision (b).

(b) Notwithstanding any other provision of this article, a witness providing opinion testimony on the value of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, shall base his or her opinion on the value of reproducing the improvements *without taking into consideration any depreciation or obsolescence of the improvements.* [Emphasis added.]

By the mere nature of the fact that the properties are "nonprofit, special use properties," one can correctly conclude that there are rarely enough comparable sales on the market over a designated period of time to establish a relevant, comparable market; the phrase "for which there is no relevant, comparable market" is arguably a description of "nonprofit, special use property" and not a qualifier of the phrase. Accordingly, a condemning agency is now forced to pay full

reproduction value for a special use property, regardless of the state of the existing improvements on the property, with no allowed deduction for depreciation or obsolescence of the improvement(s).

C. Senate Bill 821 Imposes a New Program Upon Local Agencies

Evidence Code section 824 and Civil Procedure Section 1263.321 are clearly effectuating the state policy of favoring the “reproduction cost without depreciation” method of valuation over all other just and equitable measures of compensation for determining the value of nonprofit, special use properties, hence creating a new program that is imposed upon local agencies. The effect of this legislation only applies to the practice of eminent domain, something uniquely associated with the government section and not the public at large. Therefore, the state imposition of a valuation method for nonprofit, special use properties is the equivalent of a “new program or higher level of service.”

The City of San Diego has reviewed all applicable case law and has also reviewed all Reports to the California Legislature on Denied Mandate Claims and Reports to the California Legislature on Approved Mandate Claims since the passage of Senate Bill 821. The case law that exists to date would seem to indicate that there is an exception in the mandate process for requests for reimbursement resulting from eminent domain cases on the basis that the agencies’ alleged discretion precludes reimbursement (City of Merced v. State of California, 153 Cal. App. 3d 777 (1984)). Although the City of San Diego respectfully disagrees with the Court’s holding concerning an agency’s true discretion in all circumstances, the issue of “nonprofit, special use property” has not been examined by the Courts or the Commission, and the valuation requirements which result from Senate Bill 821 require a different finding.

Senate Bill 821 specifically sets forth the process for reimbursement to local agencies as a result of its enactment. Said Bill states in part as follows:

...

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

...

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

If the Legislature had intended that local agencies would not be entitled to reimbursement for certain qualifying condemnation actions, then they would not have included the paragraphs set forth above which clearly indicate that local agencies have the right to petition the State for reimbursement costs caused by Senate Bill 821.

The burden imposed upon local agencies by the enactment of Senate Bill 821 concerning the condemnation of a very few, very particular types of property places the local agencies in the position of conceivably having to pay a value that is not the fair market value, as defined by law, but a value that could easily be multiple times the true fair market value of the property due to the mandate that depreciation and obsolescence not be considered in determining the value.

Although case law indicates that because a local agency can decide not to go forward with any particular condemnation, the condemnation is not mandated, thus reimbursement is not available. However, the flaw in that reasoning is that the Court/Commission ignores that fact that the local agency has made a specific finding that the condemnation is necessary and the particular property being condemned is also necessary. If a local agency were to ignore its responsibility to redevelop, improve roadways, and other projects that only condemnation is able to provide, then the agency would be setting itself up for, among other municipal problems and/or liabilities, deadlock on its roadways, the continued deterioration and high crime rates of those areas in need of redevelopment, etc. For example, a local agency cannot sit back and allow a street that was built to accommodate average daily trips of 2,000 to accommodate average daily trips of 20,000 due to a new development; such would certainly lead to loss of life or severe injuries. Accordingly, condemnations by local agencies are mandated in order to fulfill the municipalities responsibilities to its citizens.

Determining the need for a condemnation action is no different than the District Attorney's office using their discretion in determining whether or not to prosecute someone and then having to notify crime victims of their right to request a search warrant to test a person charged with a crime for HIV. Yet, the Commission determined that Penal Code Section 1524.1, as added by Chapter 1088, Statutes of 1988, imposes a reimbursable state mandated program within the meaning of Government Code section 17514 and section 6, article XIII B of

the California Constitution (see Report to the California Legislature on Approved Mandate Claims, July, 1992, page 4).

Likewise, determining the need for a condemnation action is no different than local law enforcement agencies using their discretion in determining whether or not to make misdemeanor arrests. Yet, the Commission determined that Penal Code section 853.6, subdivision (g), which states that officers may arrest and if they do arrest, then they are to comply with certain verification requirements. The Commission determined that this constitutes a reimbursable state mandate (see Report to the California Legislature on Approved Mandate Claims, January 1, 1995 - June 30, 1995, page 1).

As shown by other approved claims, just because there is some discretion involved in a local agencies' decision, that discretion should not, and does not, preclude that local agency from receiving proper reimbursements for state mandates. Nor, should a local agencies' ultimate discretion to condemn property for the public good preclude that local agency from receiving proper reimbursement for state mandates.

Even if the Commission determines that all condemnation actions are discretionary and not mandated for the public good, once the decision is made to condemn project areas that include nonprofit, special use properties, the local agency's costs are still multiplied NOT because of the local agency's decision to condemn, but as a direct result of Senate Bill 821. Therefore, the amount which the local agency has to pay above and beyond the appraised fair market value of the property should be reimbursed by the Commission due to the mandates of Senate Bill 821.

#### D. Estimated Costs Resulting From Mandate

To implement the provisions of Senate Bill 821, local agencies incur costs mandated by the state, as defined in Government Code section 17514 (see Exhibit A-5). In order implement these code sections, the City of San Diego is required to value nonprofit, special use property by determining how much it would cost to construct a new improvement, on a new parcel of real estate, and is not allowed to depreciate that cost based on the age of the improvement which is being condemned. In the instant case, the City of San Diego is condemning an approximate 3,000 sq. ft. neighborhood church. Utilizing one or more of the standard valuation methodologies, the fair market value of the church is \$300,000.00. Utilizing the requirements of Senate Bill 821 (the reproduction method with no allowance for depreciation), the value of a replacement church is \$719,000.00. Accordingly, the estimated cost mandated by the state upon the City of San Diego for this acquisition for fiscal year 1998 is as follows:

1. The difference between the fair market value determined utilizing the standard appraisal methodologies and the value determined utilizing the new requirements: \$419,000.00.

None of the Government Code section 17556 statutory exceptions to a finding of costs mandated by the state apply to this statute (see Exhibit A-6). To the extent local agencies may

have previously performed functions or incurred costs similar to those mandated by the statutes referenced, such efforts did not establish a preexisting duty upon the local agencies that would relieve the state of its constitutional requirement to later reimburse local agencies when these activities became mandated (see Exhibit A-7).

No funds are appropriated by the statute for reimbursement of these new costs mandated by the state and there is no other provision of law for recovery of costs from any other sources.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on August 15, 1977, at San Diego, California, by:

CASEY GWINN, City Attorney

By Debra J. Bevier  
Debra J. Bevier, Deputy  
Attorneys for the City of San Diego



SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that the intended timeframe is followed for establishment of basic firearm safety courses and to completely implement the firearm safety certificate program, it is necessary that this act take effect immediately.

## EMINENT DOMAIN—SPECIAL USE PROPERTY—VALUATION

### CHAPTER 7

#### S.B. No. 821

AN ACT to amend Section 1263.320 of, and to add Sections 1235.155 and 1263.321 to, the Code of Civil Procedure, to amend Section 823 of, and to add Section 824 to, the Evidence Code, and to add Section 7267.9 to the Government Code, relating to public property acquisitions.

[Approved by Governor February 19, 1992.]

[Filed with Secretary of State February 19, 1992.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 821, Petris. Public acquisitions: nonprofit, special use property.

Existing law specifies procedures for exercise of the power of eminent domain and requires payment of just and equitable compensation for property taken by eminent domain for which there is no relevant market value.

This bill would instead require payment of just and equitable compensation when property is taken by eminent domain and the property has no relevant, comparable value. The bill would specify, with certain exceptions for acquisitions by public entities and public utilities for specified purposes, that just and equitable compensation for defined nonprofit, special use property is the cost of purchasing land and making it suitable for the same use, plus the cost of constructing similar improvements, which the bill would require to be established by opinion testimony that does not consider depreciation or obsolescence of real property improvements. The bill would also impose a state-mandated local program by requiring public entities (including local agencies and school districts), and would also require public utilities, prior to acquiring nonprofit, special use property, to make reasonable efforts to seek alternative property, unless the property is to be acquired for transportation purposes.

The bill would apply to eminent domain actions or proceedings commenced on or after January 1, 1993.

The bill would also declare that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

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

SECTION 1. Section 1235.155 is added to the Code of Civil Procedure, to read:

1235.155. "Nonprofit, special use property" means property which is operated for a special nonprofit, tax-exempt use such as a school, church, cemetery, hospital, or similar property. "Nonprofit, special use property" does not include property owned by a public entity.

SEC. 2. Section 1263.320 of the Code of Civil Procedure is amended to read:

1263.320. (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

SEC. 3. Section 1263.321 is added to the Code of Civil Procedure, to read:

1263.321. A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (c) of Section 824 of the Evidence Code.

SEC. 4. Section 823 of the Evidence Code is amended to read:

823. Notwithstanding any other provision of this article, the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.

SEC. 5. Section 824 is added to the Evidence Code, to read:

824. (a) Notwithstanding any other provision of this article, a just and equitable method of determining the value of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, is the cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements. The method for determining compensation for improvements shall be as set forth in subdivision (b).

(b) Notwithstanding any other provision of this article, a witness providing opinion testimony on the value of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, shall base his or her opinion on the value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements.

(c) This section does not apply to actions or proceedings commenced by a public entity or public utility to acquire real property or any interest in real property for the use of water, sewer, electricity, telephone, natural gas, or flood control facilities or rights-of-way where those acquisitions neither require removal or destruction of existing improvements, nor render the property unfit for the owner's present or proposed use.

SEC. 6. Section 7267.9 is added to the Government Code, to read:

7267.9. (a) Prior to the initiation of negotiations for acquisition by a public entity or public utility of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, the acquiring public entity or public utility shall make every reasonable effort to seek alternative property which is other than nonprofit, special use property. However, this requirement shall not apply to properties acquired by public

entities for transportation purposes, including, but not limited to, the construction, expansion, or improvement of streets, highways, or railways.

(b) This section does not apply to actions or proceedings commenced by a public entity or public utility to acquire real property or any interest in real property for the use of water, sewer, electricity, telephone, natural gas, or flood control facilities or rights-of-way where those acquisitions neither require removal or destruction of existing improvements, nor render the property unfit for the owner's present or proposed use.

SEC. 7. The changes made by this act shall apply to eminent domain actions or proceedings commenced on or after January 1, 1993.

SEC. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

## SMALL CLAIMS COURT—UNLAWFUL DETAINER

### CHAPTER 8

A.B. No. 1551

AN ACT to amend Sections 116.220, 116.610, and 116.770 of the Code of Civil Procedure, relating to small claims court, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 19, 1992.]

[Filed with Secretary of State February 19, 1992.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1551, Bentley. Small claims court.

Existing law provides for the trial of small claims actions, as specified.

This bill would remove unlawful detainer actions from the jurisdiction of small claims court, would authorize a small claims court to continue matters in order to permit the parties to attempt resolution by informal or alternative means, and would specify that upon appeal of a small claims court judgment to the superior court no party has a right to a trial by jury.

The bill would also declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 116.220 of the Code of Civil Procedure is amended to read:  
116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivision (c), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivision (c), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

was unreasonable, were not reasonable where fee awarded was based on parties' contingency fee agreement which provided for a fee of 40% of all "compensation" received by property owners, including all litigation expenses reimbursed to property owners resulting in a total amount of attorney fees representing 72% of property owners' net recovery rather than 40%. People ex rel. Dept. of Transp. v. Yuki (App. 6 Dist. 1995) 37 Cal.Rptr.2d 616, 31 Cal.App.4th 1754.

Factors to be considered by trial court in determining reasonable attorney fee in eminent domain action, where appropriate, include novelty and difficulty of questions involved and skill required to perform legal services properly; likelihood that acceptance of the particular employment would preclude other employment by the attorney; amount involved and results obtained; time limitations imposed by clients or by circumstances of case; nature and length of professional relationship with client; experience, reputation, and ability of attorneys who perform the services; time and labor required of the attorneys; and informed consent of client to fee agreement. People ex rel. Dept. of Transp. v. Yuki (App. 6 Dist. 1995) 37 Cal.Rptr.2d 616, 31 Cal.App.4th 1754.

Professional football team, which prevailed in city's action to acquire team by eminent domain, was entitled to recover reasonable attorney fees incurred in city's unsuccessful appeal of award of attorney fees. City of Oakland v. Oakland Raiders (App. 1 Dist. 1988) 249 Cal.Rptr. 606, 203 Cal.App.3d 78.

While a trial court may award attorney fees in an amount called for by the terms of an attorney fee agreement, it may not do so without considering whether an award in the amount set by the agreement is reasonable in the context of other factors which must be considered, including time and labor required, novelty and difficulty of questions involved, skill necessary to perform the legal service properly, likelihood that the acceptance of the particular employment will preclude other employment by the lawyer, and the experience, reputation, and ability of

the lawyer or lawyers performing the services. Glendora Community Redevelopment Agency v. Demeter (App. 2 Dist. 1984) 202 Cal.Rptr. 389, 155 Cal.App.3d 465.

4. — Discretion, attorney's fees

Amount to be awarded as attorney fees when final offer for condemned property is unreasonable and property owners' demand reasonable is a matter committed to trial court's discretion. People ex rel. Dept. of Transp. v. Yuki (App. 6 Dist. 1995) 37 Cal.Rptr.2d 616, 31 Cal.App.4th 1754.

7. — Contingent fees, attorney's fees

Trial court may not determine a "reasonable" attorney fee in eminent domain action solely by reference to amount under contingency agreement; however, court may consider contingent nature of fee agreement as one factor in determining a reasonable fee. People ex rel. Dept. of Transp. v. Yuki (App. 6 Dist. 1995) 37 Cal.Rptr.2d 616, 31 Cal.App.4th 1754.

10. Expert witness fees

Award of nearly \$80,000 to property owners for appraisal fees was not excessive as a matter of law in eminent domain proceeding, although state claimed that services of two appraisers were duplicative and that their fees, representing approximately six full 40-hour weeks each, were grossly overstated where case required that appraisers determine use and developability of property in its "before" condition and acres remaining after taking, review construction plans to determine impact on property, consult with government officials, investigate facts regarding zoning, work closely with engineer, assess value of parcels taken and determine severance damages and potential special benefits, and attorneys stated that it was their usual practice in cases involving complex and difficult issues and substantial amounts of money to recommend that client retain at least two appraisers. People ex rel. Dept. of Transp. v. Yuki (App. 6 Dist. 1995) 37 Cal.Rptr.2d 616, 31 Cal.App.4th 1754.

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§ 1235.155. Nonprofit, special use property

"Nonprofit, special use property" means property which is operated for a special nonprofit, tax-exempt use such as a school, church, cemetery, hospital, or similar property. "Nonprofit, special use property" does not include property owned by a public entity.

(Added by Stats.1992, c. 7 (S.B.821), § 1).

Historical and Statutory Notes

1992 Legislation

Section 7 of Stats.1992, c. 7 (S.B.821), provides:

"The changes made by this act shall apply to eminent domain actions or proceedings commenced on or after January 1, 1993."

§ 1235.160. Person

"Person" includes any public entity, individual, association, organization, partnership, trust, limited liability company, or corporation.

(Amended by Stats.1994, c. 1010 (S.B.2053), § 63.)

Historical and Statutory Notes

1994 Legislation

The 1994 amendment made technical changes to conform with enactment of the California Limited Liability Company Act.

Subordination of legislation by Stats.1994, c. 1010 (S.B. 2053), see Historical and Statutory Notes under Business and Professions Code § 128.

1996 Legislation

Legislative declaration of Stats.1996, c. 57 (S.B.141), § 30, relating to the rendition of professional services by a limited liability company, see Historical and Statutory Notes under Code of Civil Procedure § 699.720.

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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p.4th 930, review

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fee. County Sanitation Dist. No. 8 of Los Angeles County  
v. Watson Land Co. (App. 2 Dist. 1993) 22 Cal.Rptr.2d  
117, 17 Cal.App.4th 1268, as modified.

Angeles County v. Watson Land Co. (App. 2 Dist. 1993) 22  
Cal.Rptr.2d 117, 17 Cal.App.4th 1268, as modified.

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Diego County v.  
tr. 44, 184 Cal.

III. PROCEEDINGS

141. Expert witnesses—In general  
Value of land for eminent domain purposes is essentially  
question of opinion to be established by expert testimony.  
County Sanitation Dist. No. 8 of Los Angeles County v.  
Watson Land Co. (App. 2 Dist. 1993) 22 Cal.Rptr.2d 117,  
17 Cal.App.4th 1268, as modified.

Trial court did not abuse its discretion in refusing to  
grant substantial trial continuance to allow landowner to  
obtain additional expert testimony after trial court excluded  
expert presented by landowner for value of easement  
condemned by county sanitation district; landowner was  
on notice that county would seek to exclude landowner's  
expert, and on notice of basis of county's objections, and  
landowner chose not to present valuation testimony as  
owner of property, or to cross-examine valuation presented  
by county. County Sanitation Dist. No. 8 of Los  
Angeles County v. Watson Land Co. (App. 2 Dist. 1993) 22  
Cal.Rptr.2d 117, 17 Cal.App.4th 1268, as modified.

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tural is inadmis-  
Concord v. Con-  
2) 185 Cal.Rptr.

143. — Testimony, expert witnesses  
Expert testimony presented by landowner on severance  
damages from easement in gross condemned by county  
sanitation district could be excluded, regardless of wheth-  
er expert's apportionment of severance was reasonable, in  
light of expert's failure to use appropriate method to  
determine gross damage figure from which to calculate  
apportionment. County Sanitation Dist. No. 8 of Los

Expert's opinion in condemnation action may be excluded  
if expert employs methodology not sanctioned by state  
law. County Sanitation Dist. No. 8 of Los Angeles County  
v. Watson Land Co. (App. 2 Dist. 1993) 22 Cal.Rptr.2d  
117, 17 Cal.App.4th 1268, as modified.

§ 1263.321. Nonprofit, special use property; determination of value

A just and equitable method of determining the value of nonprofit, special use property for which there  
is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the  
exceptions set forth in subdivision (c) of Section 824 of the Evidence Code.  
(Added by Stats.1992, c. 7 (S.B.821), § 3.)

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Historical and Statutory Notes

1992 Legislation  
Section 7 of Stats.1992, c. 7 (S.B.821), provides:

"The changes made by this act shall apply to eminent  
domain actions or proceedings commenced on or after  
January 1, 1993."

§ 1263.330. Exclusions from fair market value

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Library References

California Jury Instructions—Civil [BAJI].

Notes of Decisions

3. — Exceptions, project enhanced value  
Evidence in inverse condemnation suit by property  
owners against irrigation district arising from flooding  
damage supported conclusion that property owners did  
not reasonably expect property to be within district's  
"project" at time they purchased their property and that  
therefore property could be valued as lakefront property.  
Salton Bay Marina, Inc. v. Imperial Irr. Dist. (App. 4 Dist.  
1985) 218 Cal.Rptr. 839, 172 Cal.App.3d 914.

announcement of intent to condemn and city's initial offer  
to homeowners, homeowners were not entitled to award  
representing difference between rental value of homes if  
unaffected by condemnation and rental value as affected  
by the condemnation, whether or not city's precondemna-  
tion conduct was unreasonable. City of Fresno v. Shew-  
make (App. 1 Dist. 1982) 181 Cal.Rptr. 451, 129 Cal.  
App.3d 907.

4. Decreased value  
In absence of any evidence that homeowners lost actual  
or anticipated rental income during delay between city's

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Article 5

COMPENSATION FOR INJURY TO REMAINDER

§ 1263.410. Mandatory compensation; amount

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Library References

California Jury Instructions—Civil [BAJI].

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§ 1263.260. Election to remove improvements; notice

Library References

California Jury Instructions—Civil [BAJI].

§ 1263.270. Location of improvement on property not taken; order to acquire entire improvement

Library References

California Jury Instructions—Civil [BAJI].

Article 4

MEASURE OF COMPENSATION FOR PROPERTY TAKEN

Section

1263.320. Fair market value.

Section

1263.321. Nonprofit, special use property; determination of value.

§ 1263.310. Mandatory compensation; measure

Library References

California Jury Instructions—Civil [BAJI].

Notes of Decisions

4. Fair market value—In general

"Fair market value" of property taken through eminent domain is not limited to value of property as used at time of taking, but takes into account highest and most profitable use to which property might be put in reasonably near future. City of San Diego v. Neumann (1993) 25 Cal.Rptr.2d 480, 6 Cal.4th 738, 863 P.2d 725.

Measure of just compensation for property taken in eminent domain is fair market value. County of San Diego v. Rancho Vista Del Mar, Inc. (App. 4 Dist. 1993) 20 Cal.Rptr.2d 675, 16 Cal.App.4th 1046, modified on denial of rehearing, review denied.

In condemnation proceedings, measure of compensation is fair market value of property taken. Contra Costa County Flood Control and Water Conservation Dist. v. Lone Tree Investments (App. 1 Dist. 1992) 9 Cal.Rptr.2d 326, 7 Cal.App.4th 930, review denied.

Only if each square foot of parcel condemned has same value is the proper method for valuing the taking determining fair market value of entire parcel based on its potential for commercial development, calculating price per square foot, and then valuing take based on price per

square foot. Contra Costa County Flood Control and Water Conservation Dist. v. Lone Tree Investments (App. 1 Dist. 1992) 9 Cal.Rptr.2d 326, 7 Cal.App.4th 930, review denied.

Property's fair market value is fixed, for purpose of condemnation award, at property's most advantageous and potentially profitable use. San Diego Gas & Elec. Co. v. Daley (App. 4 Dist. 1988) 253 Cal.Rptr. 144, 205 Cal.App.3d 1334.

Fair market value of condemned land must include higher and better use of property where condemnee establishes reasonable probability that such use would be permitted by city. Redevelopment Agency of City of Concord v. Contra Costa Theatre, Inc. (App. 1 Dist. 1982) 185 Cal.Rptr. 159, 135 Cal.App.3d 73.

5. — Leases, fair market value

Eminent Domain Law recognizes that, generally, lessee is entitled to compensation for value of his leasehold interest taken, if any, and any of his property taken therewith, including goodwill. City of Vista v. Fielder (1996) 54 Cal.Rptr.2d 861, 13 Cal.4th 612, 919 P.2d 151.

§ 1263.320. Fair market value

(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

(Amended by Stats.1992, c. 7 (S.B.821), § 2.)

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# EXPERT AND OTHER OPINION TESTIMONY

§ 824

## Ch. 1

ence of any noncompensable item of value, damage or injury. *People ex rel. Department of Public Works v. Investors Diversified Services, Inc.* (App. 2 Dist. 1968) 68 Cal.Rptr. 663, 262 Cal.App.2d 367.

price of other property between land improvement for purposes of establishing percentage of depreciation of property being condemned, would not be permissible under this section. *Redevelopment Agency of City of Long Beach v. First Christian Church of Long Beach* (App. 2 Dist. 1983) 189 Cal.Rptr. 749, 140 Cal.App.3d 690.

### 5. Capitalized value

Subdivision (a)(6) of this section did not preclude admission into evidence of capitalized rental value of condemned rock quarry, because rental values being capitalized were for condemned property itself. *People ex rel. Dept. of Water Resources v. Andresen* (App. 5 Dist. 1987) 238 Cal.Rptr. 826, 193 Cal.App.3d 1144, review denied.

Appraiser's report made in another action, valuing certain nearby property at a substantially higher amount per acre than value given to the properties in the instant case, would not have been admissible in the instant case as proof of valuation of the properties in suit, but could have been utilized at trial as an impeachment source to attack appraiser's opinion of value. *City of Los Angeles v. Waller* (App. 2 Dist. 1979) 154 Cal.Rptr. 12, 90 Cal.App.3d 766.

### 6. Improper matter considered for alternate purposes

It was not improper for appraiser to establish low end of fair market value of personal property by looking to what it would cost on used market, where appraiser did not base his ultimate opinion of fair market value on used cost of items. *County of San Diego v. Cabrillo Lanes, Inc.* (App. 4 Dist. 1992) 12 Cal.Rptr.2d 613, 10 Cal.App.4th 576, modified, review denied.

Legislative intent evidence in this section declaring inadmissible in eminent domain proceeding opinion as to value of property or interest other than that being valued was to exclude party producing expert appraiser from using his opinion of value of another property as whole as prop in proving value of the subject property, not from giving opinion indirectly related to value of other property or bearing on only one element thereof. *State ex rel. State Public Works Bd. v. Stevenson* (App. 3 Dist. 1970) 84 Cal.Rptr. 742, 5 Cal.App.3d 60.

Testimony by expert appraiser concerning noncomparable sales, in the process of expressing an opinion on the apportionment of sales

## § 823. Property with no relevant, comparable market

Notwithstanding any other provision of this article, the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.

(Added by Stats.1980, c. 381, p. 758, § 6. Amended by Stats.1992, c. 7 (S.B.821), § 4.)

### Legislative Committee Comment—Senate 1980 Addition

Section 823 is drawn from Code of Civil Procedure Section 1263.320(b) (fair market value in eminent domain proceeding of property for which there is no relevant market). Section 823 is included because there may be no relevant market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties. See Code Civ.Proc. § 1263.320(b) and Comment thereto.

### Historical and Statutory Notes

The 1992 amendment inserted "comparable" and made a nonsubstantive change.

"The changes made by this act shall apply to eminent domain actions or proceedings commenced on or after January 1, 1993."

Section 7 of Stats.1992, c. 7 (S.B.821), provides:

## § 824. Nonprofit, special use property

(a) Notwithstanding any other provision of this article, a just and equitable method of determining the value of nonprofit, special use property, as defined



by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, is the cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements. The method for determining compensation for improvements shall be as set forth in subdivision (b).

(b) Notwithstanding any other provision of this article, a witness providing opinion testimony on the value of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, for which there is no relevant, comparable market, shall base his or her opinion on the value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements.

(c) This section does not apply to actions or proceedings commenced by a public entity or public utility to acquire real property or any interest in real property for the use of water, sewer, electricity, telephone, natural gas, or flood control facilities or rights-of-way where those acquisitions neither require removal or destruction of existing improvements, nor render the property unfit for the owner's present or proposed use.

(Added by Stats.1992, c. 7 (S.B.821), § 5.)

**Historical and Statutory Notes**

Section 7 of Stats.1992, c. 7 (S.B.821), provides:

"The changes made by this act shall apply to eminent domain actions or proceedings commenced on or after January 1, 1993."

**Cross References**

Eminent domain, measure of compensation for nonprofit, special use property governed by this section, see Code of Civil Procedure § 1263.321.

**Article 3**

**OPINION TESTIMONY ON PARTICULAR SUBJECTS**

**Section**

870. Opinion as to sanity.

*The heading of Article 3, added as Article 2 by Stats.1965, c. 299, § 2, operative Jan. 1, 1967, was amended to be Article 3 by Stats.1965, c. 1151, p. 2904, § 3, operative Jan. 1, 1967.*

**Historical and Statutory Notes**

Section 151 of Stats.1965, c. 299, provides: "Sections 2 to 150 of this act shall become operative on January 1, 1967."

Sections 6 and 7 of Stats.1965, c. 1151, p. 1152, read as follows:

"Sec. 6. This act does not apply to any action or proceeding that has been brought to trial prior to the effective date of this act.

"Sec. 7. Sections 3, 4, and 5 of this act shall become operative only if Assembly Bill No. 333

is enacted by the Legislature at its 1965 Regular Session [Stats.1965, c. 299] and in such case shall become operative at the same time as Assembly Bill No. 333 becomes operative. If Assembly Bill No. 333 is so enacted and becomes operative, then Title 7.1 of Part 3 of the Code of Civil Procedure as added by Section 1 of this act is repealed at the time such bill becomes operative [Jan. 1, 1967]."



## Cross References

Protection of owner or occupant, other provisions of law giving greater protection than is provided by this section, see Government Code § 7272.

## Notes of Decisions

Discretion of public entity 2  
 Federally funded projects 3  
 Inadequate procedures 1

## 1. Inadequate procedures

Where port authority improperly failed to adopt regulations which would have required that claims for relocation expenses be made within 18-month limitations period, suit for such relocation expenses was timely when brought 14 months after claimant moved from real property acquired by public entity. *Superior Strut & Hanger Co. v. Port of Oakland* (App. 1 Dist. 1977) 140 Cal.Rptr. 515, 72 Cal.App.3d 987.

Where relocation expenses claimant was not required to present claim before port authority for expenses involved in its relocation after authority obtained its property for public use, since authority's administrative procedures were inadequate, applicable limitations period was that established in relocation guidelines and suit was not barred by limitations when filed within 18 months after claimant's right of action accrued. *Superior Strut & Hanger Co. v. Port of Oakland* (App. 1 Dist. 1977) 140 Cal.Rptr. 515, 72 Cal.App.3d 987.

## 2. Discretion of public entity

For purposes of payment of relocation benefits to owners of homes on leased property which had been acquired by State by condemnation, the department of general services did not abuse its discretion in adopting regulation providing that tenants in common would be collectively entitled, as a "family" to only one payment of relocation benefits. *Albright v. State* (App. 2 Dist. 1979) 161 Cal.Rptr. 317, 101 Cal.App.3d 14.

## 3. Federally funded projects

Federally allowed payments to persons displaced by eminent domain proceeding for relocation payments and assistance are minimums which must be paid on federally assisted projects. *United Auto Workers, Local 887 v. Department of Transp.* (App. 2 Dist. 1993) 25 Cal. Rptr.2d 290, 20 Cal.App.4th 1462, review denied.

Relocation assistance was available under California law to union required to move because of condemnation for highway project which was partially funded by federal government, even though federal law did not entitle union to such assistance. *United Auto Workers, Local 887 v. Department of Transp.* (App. 2 Dist. 1993) 25 Cal.Rptr.2d 290, 20 Cal.App.4th 1462, review denied.

## § 7267.9. Nonprofit, special use property; acquisition procedures

(a) Prior to the initiation of negotiations for acquisition by a public entity or public utility of nonprofit, special use property, as defined by Section 1235.155 of the Code of Civil Procedure, the acquiring public entity or public utility shall make every reasonable effort to seek alternative property which is other than nonprofit, special use property. However, this requirement shall not apply to properties acquired by public entities for transportation purposes, including, but not limited to, the construction, expansion, or improvement of streets, highways, or railways.

(b) This section does not apply to actions or proceedings commenced by a public entity or public utility to acquire real property or any interest in real property for the use of water, sewer, electricity, telephone, natural gas, or flood control facilities or rights-of-way where those acquisitions neither require removal or destruction of existing improvements, nor render the property unfit for the owner's present or proposed use.

(Added by Stats.1992, c. 7 (S.B.821), § 6.)

§ 17514. Costs mandated by the state

"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.

(Added by Stats.1984, c. 1459, § 1.)

Code of Regulations References

Test claim filing, see 2 Cal. Code of Regs. § 1183.

Law Review Commentaries

State environmental permit fees charged to federal facilities: distinguishing legal user fees from illegal taxes. Samuel D. McVey, 29 Santa Clara L.Rev. 879 (1989).

Notes of Decisions

- Antecedent costs 3
- Appropriation 2
- Claims 4
- Enactments 1

required. Orange County v. Flournoy (1974) 117 Cal.Rptr. 224, 42 Cal.App.3d 908.

3. Antecedent costs

Legislature was not constitutionally or statutorily required to reimburse school district for expenditures incurred in complying with state safety statutes enacted prior to 1975. Los Angeles Unified School Dist. v. State (App. 2 Dist. 1991) 280 Cal.Rptr. 237, 229 Cal.App.3d 552.

1. Enactments

Words "enacted after January 1, 1973" within Rev. & T.C. former § 2231 providing that "The state shall pay to each county, city and county, city and special district an amount to reimburse for the full costs, which are mandated by acts enacted after January 1, 1973, of any new state-mandated program or any increased level of service of an existing mandated program" do not mean "effective after January 1, 1973." Orange County v. Flournoy (1974) 117 Cal.Rptr. 224, 42 Cal.App.3d 908.

This section providing for reimbursement to local governmental units of costs mandated by State, so as to include only costs incurred on or after January 1, 1975, effectively precluded school district's claim for reimbursement for costs incurred as result of 1973 legislation. Los Angeles Unified School Dist. v. State (App. 2 Dist.1991) 280 Cal.Rptr. 237, 229 Cal.App.3d 552.

2. Appropriation

Provision of Rev. & T.C. former § 2231 that "The state shall pay to each county, city and county, city and special district an amount to reimburse for the full costs, which are mandated by acts enacted after January 1, 1973, of any new state-mandated program or any increased level of service of an existing mandated program" is not itself a "continuing appropriation," but rather, further legislative action is

4. Claims

As to claim for reimbursement of state-mandated costs based on statute enacted after July 1, 1980 and filed with Board of Control prior to Jan. 1, 1985, Commission on State Mandates should determine if claim meets either definition found in Gov.Code § 17514 or Rev. & Tax Code §§ 2207, 2207.5; only if it does should claim be allowed. 68 Ops.Atty.Gen. 244, 9-11-85.

§ 17514.5. Repealed by Stats.1993, c. 216 (A.B.843), § 1

Historical and Statutory Notes

The repealed section, added by Stats.1984, c. 1459, § 1, defined the term "cost savings authorized by the state."

within a reasonable time. The test claim may be based upon estimated costs that a local agency or school district may incur as a result of the statute or executive order and may be filed at any time after the statute is enacted or the executive order is adopted. The claim shall be submitted in a form prescribed by the commission. After a hearing in which the claimant and any other interested organization or individual may participate, the commission shall determine if there are costs mandated by the state.

(Added by Stats.1984, c. 1459, § 1.)

#### Code of Regulations References

Action on proposed decision, see 2 Cal. Code of Regs. § 1188.1.

Conduct of hearing, see 2 Cal. Code of Regs. § 1187.6.

Form of decision, see 2 Cal. Code of Regs. § 1188.2.

Notice of hearing, see 2 Cal. Code of Regs. § 1187.1.

Representation at hearing, see 2 Cal. Code of Regs. § 1187.8.

Test claim filing, see 2 Cal. Code of Regs. § 1183.

### § 17556. Findings

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 that:

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

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) 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.

(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.

(e) 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 the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(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.

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1.)

Code of Regulations References

Filing request for reimbursement, see 2 Cal. Code of Regs. § 1184.

Notes of Decisions

Validity 1

1. 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 (1991) 280 Cal.Rptr. 92, 53 Cal.3d 482, 808 P.2d 235.

§ 17557. Amount to be subvned; parameters and guidelines; allocation formula or uniform allowance; specifying fiscal years for reimbursement, test claim

If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvned to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 60 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 60-day period at any time prior to its adoption of the parameters and guidelines and for any length of time the commission specifies. If proposed parameters and guidelines are not submitted within the 60-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 60-day period is justified. A local agency, school district, and the state may file a claim or request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines.

In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for

**STATE-MANDATED LOCAL COSTS**

**§ 17567**

Div. 4

chapter relative to estimated and reimbursement claims generally shall also apply to claims filed pursuant to this subdivision.

(Added by Stats.1986, c. 879, § 9. Amended by Stats.1992, c. 1041 (A.B.1690), § 4.)

**Code of Regulations References**

Test claim filing, see 2 Cal. Code of Regs. § 1183.

**§ 17565. Reimbursement for costs incurred after operative date of mandate**

If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

(Added by Stats.1986, c. 879, § 10.)

**Historical and Statutory Notes**

Derivation: Rev. & T.C. former § 2234, added by Stats.1975, c. 486, § 9, amended by Stats.1977, c. 1135, § 8.6; Stats.1980, c. 1256, § 11.

**Cross References**

Review of statutes resulting in costs or revenue losses, see Revenue and Taxation Code § 2246.

**§ 17567. Prorated claims; report**

In the event that the amount appropriated for reimbursement purposes pursuant to Section 17561 is not sufficient to pay all of the claims approved by the Controller, the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time of proration. The Controller shall adjust prorated claims if supplementary funds are appropriated for this purpose.

In the event that the Controller finds it necessary to prorate claims as provided by this section, the Controller shall immediately report this action to the Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature which considers appropriations in order to assure appropriation of these funds in the Budget Act. If these funds cannot be appropriated on a timely basis in the Budget Act, the Controller shall transmit this information to the commission which shall include these amounts in its report to the Legislature pursuant to Section 17600 to assure that an appropriation sufficient to pay the claims is included in the local government claims bills or other appropriation bills. If the local government claims bills required by Section 17612 have been introduced in the Legislature, the Controller shall report directly to the chairperson of the respective committee in each house of the Legislature which considers appropriations to assure inclusion of a sufficient appropriation in the claims bills.

(Added by Stats.1986, c. 879, § 11.)

0042

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

|                       |   |   |
|-----------------------|---|---|
| Test Claim of:        | ) | No. CSM _____                                       |
|                       | ) |   |
| The City of San Diego | ) |   |
|                       | ) |   |
|                       | ) | DECLARATION OF DEBRA J. BEVIER                      |
|                       | ) |   |
|                       | ) |   |
|                       | ) | <i>Nonprofit, Special Use Property Requirements</i> |
|                       | ) |   |

I, DEBRA J. BEVIER, declare as follows:

1. I am an attorney duly licensed to practice law in all the courts of the State of California and am the attorney of record for The City of San Diego in an eminent domain action involving the condemnation of real property improved with a church (hereafter referred to as the "church property"). If called as a witness in this matter, I could and would testify to the following facts of which I have personal knowledge.

2. I am familiar with the provisions and requirements of Code of Civil Procedure sections 1235.155, 1263.321 and 1263.320; Evidence Code sections 823 and 824; and Government Code 7267.9. All of said sections were either added or amended by the enactment of Senate Bill No. 821.

3. The City of San Diego has filed a Complaint in Eminent Domain to take a fee title to the church property from Defendant owners, The Rectors, Wardens and Vestrymen of St.

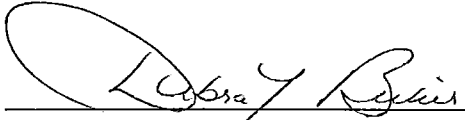
Mark's Parish in San Diego. Said church property is required for the City Heights Urban Village Project.

4. Utilizing the three standard methodologies for appraising properties involved in eminent domain actions, an independent MAI appraiser determined that the church property's fair market value is \$300,000.00.

5. In order to comply with the new and amended code sections set forth in paragraph "2" above, the City of San Diego must direct its expert appraiser to determine a new value for the church property, utilizing the reproduction method with no allowance for depreciation or obsolescence. I have been informed and believe that utilizing the appraisal method set forth above would result in a value of approximately \$719,000.00.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to my own personal knowledge.

Executed this 15<sup>th</sup> day of August, 1997.

  
Debra J. Bevier