

Hearing Date: October 30, 1997
File Number: CSM-97-238-01
Commission Staff
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ITEM 4

FINDING OF DISPUTE

TEST CLAIM

Code of Civil Procedure Section 1263.320, 1235.155, and 1263.321
Evidence Code Sections 823 and 824
Government Code Section 7267.9
Chapter 7, Statutes of 1992

Non Profit, Special Use Property Requirements

EXECUTIVE SUMMARY

The City of San Diego filed this test claim on Chapter 7, Statutes of 1992.

The Department of Finance has reviewed this test claim and opposes claimant's assertions that the test claim statute imposes a reimbursable state mandated program. (See attached letter.)

STAFF RECOMMENDATION

Therefore, staff recommends that the Commission find this test claim to be *disputed* for purposes of the timelines established under SB 11 and the Commission's regulations.

DEPARTMENT OF FINANCE

OFFICE OF THE DIRECTOR
STATE CAPITOL, ROOM 1145
SACRAMENTO, CA 95814-4998



OCT 03 1997

September 30, 1997

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of September 9, 1997, the Department of Finance has reviewed the test claim submitted by the City of San Diego (claimant) asking the Commission to determine whether specified costs incurred under Chapter 7, Statutes of 1992, (SB 821, Petris) are reimbursable state mandated costs (Claim No. CSM-97-238-01 "Non Profit, Special Use Property Requirements"). In Item IV "Description of Mandates" of the test claim, the claimant asserts that the increased costs that it and other local agencies now incur, when acquiring small properties through condemnation or eminent domain due to the valuation method prescribed in Chapter 7, are reimbursable state mandated costs. The claimant concludes that:

"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 a higher level of service."

As noted in our analysis of SB 821 (See Attachment B) the courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as "costs mandated by the state". Specifically, in City of Merced v. State of California, 153 Cal. App. 3d 777 (1984), the court said:

"We agree that the Legislature intended for payment of goodwill to be discretionary. ...whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost."

Ms. Paula Higashi
September 30, 1997
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In County of Contra Costa v State of California, 177 Cal App. 3d 62,79(1986) the court affirmed the City of Merced decision. The claimant asserts that "Merced" and "Contra Costa" do not apply to the instant situation because the courts there were not presented with the specific factual situation described in the test claim. We see no basis for or merit in that contention and, based on these court cases, the Department of Finance believes that the provisions of Chapter 7, Statutes of 1992, (SB 821, Petris) simply make an optional program available to local governments, the costs of which are not reimbursable because they are not costs mandated by the State.

As required by the Commission's regulations, we are including a "Proof of Service". This indicates that the parties included on the mailing list which accompanied your September 9, 1997 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pedro R. Reyes, Principal Program Budget Analyst at (916) 445-3274 or James Apps, State Mandates Claims Coordinator for the Department of Finance, at 445-8913.

Sincerely,



DIANE M. CUMMINS
Chief Deputy Director

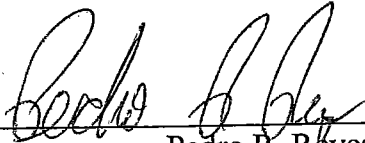
Attachments

DECLARATION OF PEDRO R. REYES
DEPARTMENT OF FINANCE
CLAIM NO. CSM-97-238-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 7, Statutes of 1992, (SB 821, Petris) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.
3. Attachment B is a true copy of Finance's analysis of SB 821, Petris prior to its enactment as Chapter 7, Statutes of 1992, (SB 821, Petris).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

September 26, 1997
at Sacramento, CA


Pedro R. Reyes

	NO.	ISSUE DATE	BILL NUMBER	ATTACHMENT B
Local Cost	3	FEB 11 1992	SB 821	
ESTIMATE		AUTHOR	DATE LAST AMENDED	
Department of Finance		Petris, et al.	PCR No. 1 January 28, 1991	

I. SUMMARY OF LOCAL IMPACT

This bill would require local governments, in eminent domain proceedings, to value "nonprofit, special use property" without consideration for depreciation or obsolescence of improvements.

This bill would not result in any reimbursable state-mandated local costs because local governments are not required to exercise their eminent domain powers.

II. FISCAL SUMMARY--LOCAL LEVEL	1991-92	1992-93	1993-94
	(Dollars in Thousands)		
Reimbursable Expenditures:	--	--	--
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

A. Introduction

Current law requires just and equitable compensation to be paid to a displaced party as a result of an eminent domain proceeding. Current eminent domain law does not distinguish between nonprofit, special use property and any other property.

This bill would require nonprofit, special use property, for which there is no relevant, comparable market, to be valued according to 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.

This bill would require any witness providing opinion testimony on the value of nonprofit, special use property, for which there is no relevant, comparable market, to base his or her opinion on the value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements.

This bill would not apply to actions or proceedings commenced by a local agency 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.

(continued)

PREPARED	Date *	REVIEWED	Date *	APPROVED	Date
(631)	2/4/92	John	2/10/92	[Signature]	2/10/92

LR:LCE-SB\SB0821-1.631/1

AUTHOR	AMENDMENT DATE	BILL NUMBER
Petris, et al.	PCR No. 1 January 28, 1992	SB 821

III. ANALYSIS (continued)

A. Introduction (continued)

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

B. Working Data

1. Section 6 of Article XIII B of the California Constitution reads as follows:

Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall [with certain exceptions] provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service.

2.

The courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as "costs mandated by the state". Specifically, in City of Merced v. State of California, 153 Cal. App. 3d 777 (1984), the court said:

"We agree that the Legislature intended for payment of goodwill to be discretionary. ...whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost."

C. Conclusion

Based on the "City of Merced" case cited above, the Department of Finance believes that the provisions of SB 821 simply would make an optional program available to local governments, the costs of which would not be reimbursable because they would not be costs mandated by the state.

Section 9 of the bill allows the Commission on State Mandates to determine whether the bill contains costs mandated by the state. Although a specific acknowledgement that the bill contains no mandate would be appropriate, that language is adequate.

PROOF OF SERVICE

Test Claim Name: "Non Profit, Special Use Property Requirements"

Test Claim Number: CSM-97-238-01

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is State Capitol, Room 1145, Sacramento, CA 95814.

On October 1, 1997, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at the State Capitol, Room 1145, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

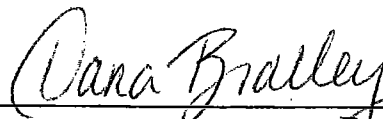
League of California Cities
1400 K Street
Sacramento, CA 95815
Attention: Ernie Silva

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

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

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 October 1, 1997 at Sacramento, California.



Dana Bralley

Commission on State Mandates

Mailing List

20-Oct-97

CSM/SB# and Claim Title CSM 97-238-01 Claim of the City of San Deigo

Government Code Sec. SB 821 wherein Code of Civil Proc. sections 1235.155 & 1263.3

Chapters Evidence Code section 824 was added and section 823 was amen

Issue Nonprofit, Special Use Property Requirements

Originated: 09-Sep-97

E. V. Anderson, District Administrator
Board of Equalizations

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City of San Deigo

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