BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Chapter 486, Statutes 1975; Chapter 1459, Statutes 1984 Filed on December 2, 1985 County of Fresno, Claimant	**Case No.: CSM 4204 and 4485** *Mandate Reimbursement Process* **ADMINISTRATIVE RECORD**

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Administrative Record

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for the *Mandate Reimbursement Process* Test Claim.

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I further certify that the above-listed documents constitute the record of the original administrative proceedings before the Commission on State Mandates on the *Mandate Reimbursement Process* test claim.

Dated: November 21, 2005

Paula Higashi, Executive Director

Assembly Bill No. 138

CHAPTER 72

An act to amend Sections 13304, 15151, and 15375 of the Elections Code, to amend Sections 17556, 17581, 17581.5, and 17617 of, to add Section 3313 to, and to repeal and add Sections 54954.2 and 54957.1 of, the Government Code, and to repeal Section 33672.7 of the Health and Safety Code, relating to state mandates, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 2005. Filed with Secretary of State July 19, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 138, Committee on Budget. State mandates.

(1) Existing law requires local elections officials to notify voters of the location of their polling places. These notices are required to inform the voter as to whether the polling place is accessible to the physically handicapped and to inform the voter of his or her right to assistance in voting, if applicable.

This bill would instead authorize, but not require, local elections officials to make these notices.

(2) Existing law requires, among other things, that elections officials transmit to the Secretary of State in the prescribed manner prior to each election and within 35 days of the election, a copy of the results at the presidential primary for candidates for President to whom delegates of a political party are pledged, reported in the specified manner.

This bill would repeal this requirement. It would state the intent of the Legislature to repeal the presidential primaries reimbursable state mandate imposed by a specified statute.

(3) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a procedure for local governmental agencies to file a test claim for reimbursement of these costs with the Commission on State Mandates.

This bill would require the commission to review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates and other applicable court decisions.

(4) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any

local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions.

Existing law provides that no local agency or school district shall be required to implement or give effect to any statute or executive order, or portion thereof that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year.

(5) Existing law also requires that the total amount due to each city, county, city and county, and special district, for which the state has determined, as of June 30, 2005, that reimbursement is required under the California Constitution, shall be appropriated for payment to these entities over a period of not more than 5 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2011–12 fiscal year.

This bill would extend the repayment date to these entities to the 2020–21 fiscal year.

This bill would provide that, under these provisions, the mandate also could be specifically identified by the Legislature in the Budget Act by reference to the commission's test claim number.

(6) Existing law establishes procedures for making reimbursement to local government whenever the Legislature or a state agency mandates a new program or higher level of services and define a reasonable reimbursement methodology for this purpose.

Existing law establishes the Commission on State Mandates to determine whether costs are mandated by the state for reimbursement to local agencies, including a school district, requires the commission to adopt parameters and guidelines for reimbursement to local agencies and school districts of claims for reimbursement for state mandates pursuant to statute, and requires the commission to not find costs mandated by the state for specified claims, if the commission, after a hearing, makes a specified finding.

This bill would require the commission not to find costs mandated by the state if the commission finds that the statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure.

(7) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public, except that closed sessions may be held under prescribed circumstances. The act also requires that the agenda be posted and include a general description of items to be discussed in closed session, and that the legislative body of a local agency publicly report any action taken in closed session, as prescribed.

The California Constitution provides that the people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writing of public officials' agencies shall be open to public scrutiny.

This bill would state legislative findings that these agenda and closed session reporting requirements of the act are necessary to implement, and reasonably within the scope of, the above-described provision of the California Constitution. The bill would require the Commission on State Mandates to set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act and Brown Act Reform test claims. The bill would require the commission to amend the appropriate parameters and guidelines, and the Controller to revise the appropriate reimbursement claiming instructions, as necessary to be consistent with this bill.

(8) The Community Redevelopment Law requires the county auditor to prepare on or before August 15 of each year, a statement for each project area that provides the amount of disbursements made in the prior fiscal year pursuant to specified provisions relating to tax-increment revenues and related provisions.

This bill would repeal this requirement.

(9) The California Constitution provides that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall reimburse the local government. Existing statutory provisions establish procedures requiring the Commission on State Mandates to determine when reimbursement is required and providing for reimbursement.

This bill would require the Commission on State Mandates, no later than June 30, 2006, to reconsider its decision regarding whether the statutory reimbursement procedure constitutes a reimbursable mandate in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted.

(10) This bill would 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. It is the intent of the Legislature in amending Section 13304 of the Elections Code to relieve local governments of the reimbursable state mandate to provide handicapped voter access information imposed by Chapter 494 of the Statutes of 1979. Since the passage of that chapter, other state and federal laws have been enacted to provide expanded rights to disabled voters. However, local elections officials may, at their option, continue to provide the information required by Chapter 494 of the Statutes of 1979.

SEC. 2. Section 13304 of the Elections Code is amended to read:

13304. The notice of the polling place which is sent to each voter as provided in Section 13303 may, at the option of the local elections official, inform the voter as to whether the polling place is accessible to the physically handicapped. In addition, this notice may inform the voter of his or her rights under Section 14282, if applicable.

SEC. 3. It is the intent of the Legislature in amending Sections 15151 and 15375 of the Elections Code to repeal, pursuant to Section 6 of Article XIII B of the California Constitution, the presidential primaries reimbursable state mandate imposed by Chapter 18 of the Statutes of 1999.

SEC. 4. Section 15151 of the Elections Code is amended to read:

15151. (a) The elections official shall transmit the semifinal official results to the Secretary of State in the manner and according to the schedule prescribed by the Secretary of State prior to each election, for the following:

(1) All candidates voted for statewide office.

(2) All candidates voted for the following offices:

(A) State Assembly.

(B) State Senate.

(C) Member of the United States House of Representatives.

(D) Member of the State Board of Equalization.

(E) Justice of the Court of Appeals.

(3) All persons voted for at the presidential primary or for electors of President and Vice President of the United States.

(4) Statewide ballot measures.

(b) The elections official shall transmit the results to the Secretary of State at intervals no greater than two hours, following commencement of the semifinal official canvass.

SEC. 5. Section 15375 of the Elections Code is amended to read:

15375. The elections official shall send to the Secretary of State within 35 days of the election in the manner requested one complete copy of all results as to all of the following:

(a) All candidates voted for statewide office.

(b) All candidates voted for the following offices:

(1) Member of the Assembly.

(2) Member of the Senate.

(3) Member of the United States House of Representatives.

(4) Member of the State Board of Equalization.

(5) Justice of the Court of Appeal.

(6) Judge of the superior court.

(7) Judge of the municipal court.

(c) All persons voted for at the presidential primary. The results for all persons voted for at the presidential primary for delegates to national conventions shall be canvassed and shall be sent within 28 days after the election.

(d) The vote given for persons for electors of President and Vice President of the United States. The results for presidential electors shall be endorsed "Presidential Election Returns."

(e) All statewide measures.

SEC. 6. Section 3313 is added to the Government Code, to read:

3313. In the 2005–06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

SEC. 7. Section 17556 of the Government Code is amended to read:

17556. 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 that 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 paragraph.

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

(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.

(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.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or 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.

SEC. 8. Section 17581 of the Government Code is amended to read:

17581. (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

(c) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(d) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution.

SEC. 9. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or

higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 10. Section 17617 of the Government Code is amended to read:

17617. The total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required under paragraph (2) of subdivision (b) of Section 6 of Article XIII B of the California Constitution, shall be appropriated for payment to these entities over a period of not more than 15 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year.

SEC. 11. Section 54954.2 of the Government Code is repealed.

SEC. 12. Section 54954.2 is added to the Government Code, to read:

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 13. Section 54957.1 of the Government Code is repealed.

SEC. 14. Section 54957.1 is added to the Government Code, to read:

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the

legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 15. Section 33672.7 of the Health and Safety Code is repealed.

SEC. 16. The Legislature finds and declares that Sections 54954.2 and 54957.1 of the Government Code are necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

SEC. 17. (a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202 on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. If a new test claim is filed on Chapter 890 of the Statutes of 2004, the commission shall, if practicable, hear and determine the new test claim at the same time

as the reconsideration of CSM-4202. The commission, if necessary, shall revise its parameters and guidelines in CSM-4485 to be consistent with this reconsideration and, if practicable, shall include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006.

(b) Notwithstanding any other provision of law, the Commission on State Mandates shall set-aside all decisions, reconsiderations, and parameters and guidelines on the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims. The operative date of these actions shall be the effective date of this act. In addition, the Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions, as necessary to be consistent with any other provisions of this act.

SEC. 18. 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:

In order to make the necessary statutory changes to implement the Budget Act of 2005 at the earliest possible time, it is necessary that this act take effect immediately.

O

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
March 27, 1986
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

A. ROLL CALL

B. MINUTES

Item 1 Hearing of February 27, 1986

C. TEST CLAIMS

Item 2 Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Item 3 Chapter 566, Statutes of 1974
Patient Aftercare Plans

Item 4 Chapter 743, Statutes of 1978
Judicial Arbitration in Municipal and Justice Courts

Item 5 Chapter 1567, Statutes of 1984
Minimum Tire Tread

D. PARAMETERS AND GUIDELINES

Item 6 Chapter 498, Statutes of 1983
(Education Code Section 35160.5)
Teacher Evaluators' Demonstrated Competence

Item 7 Chapter 48, Statutes of 1980
Marriage Mediator Programs

E. STATEWIDE COST ESTIMATE

Item 8 Chapter 1603, Statutes of 1982 and
Chapter 1166, Statutes of 1983
Democratic Presidential Delegates

F. STATEMENT OF DECISION

Item 9 SWRCB Order WQ85-10
Sediment Removal

G. MISCELLANEOUS

Item 10 State Mandates Apportionments System
Programs Proposed for Inclusion

H. EXECUTIVE SESSION

- Personnel
- Litigation

Note: All back-up material and supporting documentation for this meeting is available for public inspection at the office of the Commission on State Mandates, 1025 P Street, Room 177, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP 0942A (3/6/86)

Hearing Date: 3/27/86
File Number: CSM-4204
Staff: Stephen Lehman
WP 0936A

Test Claim
Chapter 486, Statutes of 1975 and
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Executive Summary

This test claim alleges that the procedures for filing test claims with the commission as well as reimbursement claims with the State Controller impose costs mandated by the state.

Staff, DOF and the SCO recommend that the commission deny this claim because the Controller's claiming process was established in 1972 and therefore does not fall within the definition of "costs mandated by the state" as defined in Government Code Section 17514 or in Section 6 of Article XIII B of the California Constitution.

Secondly, the test claim process established by the Government Code is a voter enacted program and therefore not a state mandate because it was intended to implement the provisions of Section 6 of Article XIII B of the California Constitution.

Claimant

County of Fresno

Chronology

11/27/85 Claim filed with the Commission on State Mandates

Claim Summary

The County of Fresno alleges that the procedures for filing test claims established under the provisions of Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 have resulted in unreimbursed state mandated costs. In

addition, the claimant alleges that the process of submitting reimbursement claims to the State Controller's Office has resulted in state mandated costs.

According to the claimant, the state is required to reimburse local agencies for any increased costs imposed by a state mandated program. The claimant states that this could be done without requiring local governments to submit claims (e.g., through direct funding, subtraction of administrative costs from revenue sources, or user fees), however, it is their position that the state has chosen the more costly alternative of requiring local governments to submit claims. The claimant states that the claiming process established by the Government Code is the only procedure by which counties may obtain the reimbursement required by Article XIII B Section 6 of the Constitution.

The claimant states that they have incurred costs in excess of $41,600 for the fiscal years 1984-85 and 1985-86.

Departmental Recommendations

The Department of Finance (DOF) recommends that this claim be denied for the following reasons:

1) the process for obtaining reimbursement for funded mandates was established in 1972 and therefore cannot be defined as a cost mandated by the state under the provisions of Government Code Section 17514, and furthermore, the process is required by Section 6 of Article XIII B of the California Constitution.

2) the statutory process for seeking reimbursements with the commission for unfunded mandates is permissive rather than mandatory. (See Attachment "A")

The State Controller's Office (SCO) has limited their response to the area of filing reimbursement claims with the SCO. In this area, the SCO recommends the commission deny the claim because the basis for submitting reimbursement claims to the SCO was established prior to January 1, 1973, and subsequent changes have not affected the concept that only programmatic mandated costs are reimbursable. (See Attachment "B")

Staff Analysis

Issue #1: Is the SCO reimbursement claim process a mandate?

The SCO authority to receive, review, pay and audit claims for reimbursement of funded mandated costs derives from Revenue and Taxation Code (RTC) Section 2231 (See Attachment "C"). This section of the RTC originated as RTC Section 2164.3 (See Attachment "D"), which was enacted by the "Property Tax Relief Act of 1972", Chapter 1406, Statutes of 1972. This legislation was an urgency measure that became effective on December 18, 1972. Therefore, the SCO authority to require and receive "reimbursement claims" from local government originated December 18, 1972.

Consequently, it is evident that the SCO reimbursement process predates the January 1, 1975 limitation established in Government Code Section 17514 and in Section 6 of Article XIII B. Should the commission determine this to be the case, then the SCO reimbursement process cannot be defined as a "cost mandated by the state." This is because Government Code Section 17514 defines "costs mandated by the state" as being:

> . . . 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, 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.

Also, it should be noted that Section 6 of Article XIII B of the California Constitution states that the legislature may, but need not, provide a subvention of funds for mandates enacted prior to January 1, 1975. Therefore, if it is determined that the SCO reimbursement process predates January 1, 1975, then a subvention of funds is not required by the constitutional provisions of Section 6 of Article XIII B of the California Constitution.

The DOF and SCO, as well as commission staff, agree that the SCO reimbursement process predates January 1, 1975, and therefore cannot be defined as costs mandated by the state.

The claimant acknowledges that Chapter 1406/72 enacted RTC Section 2164.3. However, the claimant notes that this section states that the state shall pay for the full costs of mandated programs and therefore a state mandate existed in Chapter 1406/72. The claimant states that because claiming costs are a direct result of the claiming process, they should be considered a part of the full costs of a mandated program. Staff would note that this argument ignores the provisions of the Government Code and Constitution that limit mandated costs to those statutes enacted on or after January 1, 1975.

In further support of their position, the claimant states that claiming costs are paid by the SCO for cases under Penal Code Section 4700, which deals with the liability for expenses in trials involving state prisoners. The staff, SCO, and DOF are of the position that Penal Code Section 4700 is irrelevant to this claim, as it addresses a completely different program and factual setting that is outside of the mandated cost area.

The claimant also maintains that with each new mandated program, the resulting set of SCO claiming instructions are in themselves a new mandated cost upon local government. Therefore, according to the claimant's position, any new SCO claiming instructions issued after January 1, 1975 would fall within the limitations established in Government Code Section 17514. However, it is staff's position that because the authority for the SCO to establish it's claiming process was enacted by Chapter 1406/72, it predates the definition of mandated costs.

In conclusion, staff is of the position that the SCO reimbursement process was first established by Chapter 1406/72. Therefore, the SCO reimbursement process cannot be considered a "cost mandated by the state," as defined by

Government Code Section 17514, because it existed prior to January 1, 1975. In addition, Section 6 of Article XIII B states that the Legislature need not provide a subvention of funds for mandates enacted prior to January 1, 1975.

Issue #2: Do Government Code Sections 17500 et seq. result in costs mandated by the state?

The claimant alleges that the test claim procedures established by the legislature require local agencies to perform additional activities as part of each new mandate and to participate in a separate administrative process mandated by the state. The claimant states that Chapter 486/75 established procedures under the Board of Control and that Chapter 1459/84 revised those procedures under the Commission on State Mandates. It is the claimant's contention that the costs incurred as a result of complying with the procedures established under Chapter 486/75 and Chapter 1459/84 are costs mandated by the state. Furthermore, the claimant states that there are less costly methods that could be utilized in determining the existence of mandated costs. However, staff is of the opinion that the cost of one method over another is not relevant to the issue of establishing the entire process as a mandate.

Because Government Code Sections 17500 et seq. are intended to consolidate the procedures under the Revenue and Taxation Code with those identified in the Constitution and because the commission is the successor agency to the Board of Control, and is currently the sole administrative body with authority to adjudicate mandated cost claims, staff will focus it's discussion on whether Government Code Sections 17500 et seq. impose costs mandated by the state. In addition, because this claim was filed November 27, 1985 the first fiscal year reimbursable according to Government Code Section 17557 is the 1984-85 F.Y., the year in which the commission was established.

With this in mind, we would note that Government Code Section 17500 states in part, the following:

> 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. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution.

It is staff's position that this language supports the argument that Government Code Sections 17500 et seq. are the implementing procedures for Section 6 of Article XIII B of the California Constitution. Therefore, these Government Code Sections cannot be considered to impose state mandated costs, because they implement a provision of the constitution.

In further support of this position, staff would refer to the Appeals Court decision in the case of County of Contra Costa v. State of California

(1/31/86) 3 CIV. 24357, 86 DAR 466 (See Attachment "E") in which the Third District Court of Appeals stated, in part, the following:

1. ". . . Perhaps in recognition of its repealable and thus impermanent character, the People, by enacting Article XIII B, have imposed a constitutional requirement of reimbursement. Yet nothing in Article XIII B renders the statutory administrative procedure for hearing and determining claims void. That procedure remains a viable administrative remedy by which the local governments may claim reimbursement for state mandated costs."

2. ". . . While the Legislature may not unreasonably curtail or impair a right granted by a self executing constitutional provision, it may adopt reasonable procedural requirements for assertion of the right."

3. ". . . Although the Constitution grants the right to compensation, it does not specify the procedure by which the right may be enforced. Such procedure may be set up by statutory or charter provisions, and when so established, a failure to comply with it is deemed to be a waiver of the right to compel the payment of damages."

Based upon the above statements by the Appeals Court, it should be concluded that the Legislature was well within it's authority to enact Government Code Sections 17500 et seq. to implement an administrative procedure for Section 6 of Article XIII B. If the commission is inclined to agree with this statement, then it must be concluded that Government Code Sections 17500 et seq. are a direct result of the passage of the voter enacted initiative, Proposition 4, which enacted Section 6 of Article XIII B.

Also, Government Code Section 17556(a)(6) states that the commission shall not find state mandated costs when:

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

Therefore, staff would point out that the entire mandated cost process, which would include the commission, is the result of a voter initiated mandate, <u>not</u> a state mandate.

In further support of this argument, staff would note that the claimant in it's rebuttal, states that ". . . whatever procedures may have existed before were revoked by Proposition 4. With the enactment of Article XIII B, the Constitution, not the legislature defined mandate obligations." Staff would agree with the claimant's statement, and furthermore, we would note that the only vehicle by which the constitution can be amended is through a voter initiative. Again, this would mean that the Government Code provisions concerning mandated costs are the result of a voter enacted initiative, and therefore cannot be considered a state mandated program.

In addition, the claimant argues that since Article XIII B was enacted by the voters, rather than the Legislature, it cannot be stated that reimbursement of claiming costs was unintended. The claimant states:

> From the electorate's standpoint, payment of claiming costs could have been assumed to be part of this process. After all, taxpayers are familiar with the need to comply with state laws; and they also know that costs incurred in the preparation, for example, of income tax returns will be offset as a deduction.

In response to this position, staff would point out that because Article XIII B is the basis of this alleged mandate, the costs of preparing test claims are the result of a voter enacted initiative.

Also, the commission has requested the Legislature to review the issue of test claim preparation and presentation being reimbursable. This review will take place when AB 4264 (Vasconcellos), a commission sponsored claims bill, is heard in the Assembly Ways and Means Committee in early April 1986.

In summary, it is staff's position that Government Code Sections 17500 et seq. are nothing more than implementing procedures that were necessitated by the enactment of Section 6 of Article XIII B of the California Constitution and, therefore, cannot be considered a state mandated program, but rather, a voter enacted program.

Staff Recommendation

Staff recommends the commission find that Chapter 486/75 and Chapter 1459/84 do not impose costs mandated by the state as defined in Government Code Section 17514, and Section 6 of Article XIII B of the California Constitution, for the following reasons:

1) Those sections of the Revenue and Taxation Code that pertain to the SCO reimbursement claim process were enacted by Chapter 1406/72. Therefore, those sections of the RTC predate the January 1, 1975 limitation established in Government Code Section 17514 and Section 6 of Article XIII B of the California Constitution.

2) Government Code Sections 17500 et seq. are not a state mandated program because as 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. Therefore, Goverment Code Sections 17500 et seq. are nothing more than implementing procedures that were necessitated by the enactment of Section 6 of Article XIII B of the California Constitution and cannot be considered a state mandated program, but rather, a voter enacted program.

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
CSM 1 (8/85)

TEST CLAIM FORM

(Submit FOUR COPIES of ALL ATTACHMENTS)

RECEIVED
DEC 2 1985
COMMISSION ON STATE MANDATES

FOR OFFICE USE ONLY	
DATE FILED 11-27-85	CLAIM NO. CSM-4204

ENTITY SUBMITTING CLAIM

County of Fresno

CONTACT PERSON FOR QUESTIONS ON CLAIM: Paul Robinson

TELEPHONE NO.: (209) 488-3496

SEND FORM AND ATTACHMENTS TO:

COMMISSION ON STATE MANDATES
1025 P STREET, ROOM 177
SACRAMENTO, CA 95814
(916) 323-3562

ADDRESS

Fresno County Auditor-Controller/Treasurer
P.O. Box 1247, Fresno, CA 93715-1247

REPRESENTATIVE ORGANIZATION TO BE NOTIFIED

CSAC

I. STATUTE (OR) EXECUTIVE ORDER ALLEGED TO CONTAIN MANDATE

Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984

II. THE FOLLOWING *MUST* BE PROVIDED WITH THE CLAIM

A. A copy of the chaptered bill or executive order which contains the alleged mandate, specifically identifying the statutes and sections alleged to contain a mandate.

B. Identify state constitutional provisions, federal statutes or executive orders and/or court decisions that impact the alleged mandate.

C. Attach narrative which describes in detail the alleged mandated activities. Include a description of what was required prior to the enactment of the alleged mandate, what the alleged mandate requires and how any increased level of service or new program was incurred.

If the narrative describing an alleged mandate involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by testimonial or documentary evidence which shall be submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized or competent to do so and the basis for authorization or competence must be stated in the declarations.

D. Attach a statement of actual and/or estimated costs which result from the alleged mandate, identified by function and fiscal year.

IMPORTANT NOTE: Test claims will be returned to the claimant if any of the preceding elements or attached documents are illegible, missing or incomplete.

III. CERTIFICATION

I certify under penalty of perjury that the foregoing and the attachments are true and correct of my own knowledge.

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE: Gary W. Peterson, Auditor-Controller/Treasurer

TELEPHONE NO.: (209) 488-3496

SIGNATURE OF AUTHORIZED REPRESENTATIVE: Gary W. Peterson

DATE:

County of Fresno
Test Claim: Chapter 486,
Statutes of 1975, and Chapter 1459, Statutes of 1984

STATE-MANDATED CLAIMING COSTS

Fresno County has been incurring unreimbursed costs resulting from the state-established mandate reimbursement process. These costs began with the original Senate Bill 90 (Chapter 1406, Statutes of 1972) and have expanded with the procedures established by the Board of Control (Chapter 486, Statutes of 1975) and the Commission on State Mandates (Chapter 1459, Statutes of 1984).

The purpose of this claim is to establish that the claiming processes required by the state are not only an extension of each new mandate but are in fact a mandate in and of themselves. Since we know of no legislative or constitutional provisions that prohibit their subvention, all local agencies costs resulting from these requirements should be reimbursed.

Background

Article XIII B, Section 6, of the California Constitution provides, in 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... the costs of such program or level of service... (underlining added).

Additionally, Revenue and Taxation Code Section 2207 says,

> "Costs mandated by the state" means any increased costs which a local agency is required to incur as the result of ... any law enacted after January 1, 1973, which mandates a new program or increased level of service of an existing program... (underlining added).

This language was recently reaffirmed by Government Code Section 17514's definition of a state mandate as "any increased cost which a local agency or school district is required to incur."

Only three exemptions to this reimbursement definition are listed by Article XIII B: mandates requested by the local agency affected, legislation defining a new crime or changing the definition of any existing crime, or mandates occurring before January 1, 1975. Relative to the authority of the Commission on State Mandates, Government Code Section 17556 expands this list to seven areas that may not be declared a mandate. We believe that none of these exemptions apply to this test claim.

Therefore, a reimbursable state mandate should be declared for any increased costs incurred by a local agency that are the result of a non-voluntary new program or higher level of service required by the legislature or any state agency. Relative to this test claim, the issues to be decided include (1) identifying claiming costs, (2) establishing whether they are required by the state, and (3) determining if they involve a new program or higher level of service.

Claiming Costs

For the purpose of this test claim, there are three types of claims that are available to local agencies and school districts: test claims, estimated claims, and reimbursement claims. The definitions for these terms have been supplied by Revenue and Taxation Code Section 2218. Such costs have been incurred by Fresno County both in terms of the time and materials used by our employees to collect data and prepare documents required for reimbursement of mandated expenditures and also through contracts with vendors who assist in this process. If the current claiming process were not required, these costs would not have been incurred.

Procedural Requirements

The state is required to reimburse local agencies for any increased costs required by a state mandate. This could be done without the need for claims submitted by counties -- e.g., through direct funding, subtraction of administrative costs from revenue sources, or user fees -- but the state has established alternative and sometimes costly procedures. The purpose of these claiming laws and legislative disclaimers is to benefit the state at the expense of the local agency, e.g., Revenue and Taxation Code Section 2231(d).

For example, test claims <u>must</u> be submitted as prescribed by the Commission (Government Code Section 17555) and according to legislative deadlines (Revenue and Taxation Code Section 2253.8). Similarly reimbursement claims must be submitted according to state-established procedures (Revenue and Taxation Code Section 2231 (d)(1)(a)) and deadlines (Revenue and Taxation Code Section 2238). In fact the claiming process has now been established as the only procedure by which counties may obtain the reimbursement required by Article XIII B (Government Code Section 17552).

Occasionally code sections include the term "may" instead of or in addition to "shall" and, thus, give the impression that the claiming procedures are optional. However, since the state must pay for mandated costs but will do so only when procedures established by it are followed, local agencies have no option except to perform additional administrative activities. These include the collection of mandate data and the preparation of claim forms and supporting schedules by county employees or

through contracted support services. If these activities are not undertaken, county costs will not be incurred; but then the state would not pay for its mandated activities. And if the state does not pay the local agencies, then local agencies are not required to obey the original mandate.

Mandated Activity

All mandates prior to January 1, 1975, are controlled by legislative guidelines. Chapter 1406, Statues of 1973 (the original SB 90), established Revenue and Taxation Code Section 2164.3, which required the state to pay all mandates after January 1, 1973. The process was expanded by subsequent legislation.

With the enactment of Article XIII B, ultimate control over mandate was taken from the legislature. Law and regulations put into affect after January 1, 1975, must be interpreted in light of the state constitution. One of these new laws was Chapter 486, Statutes of 1975, which established the Board of Control's jurisdiction in the mandate process (Revenue and Tax Code Section 22520 et seq.). In so doing the state established new procedures for evaluating mandates and, thus, required local agencies to prove that mandates existed before they would be reimbursed. In effect, the state shifted its reimbursement requirement to the local agencies. The resulting process has increased the burden on local governments and, in some cases, has hampered their ability to get complete mandate reimbursement.

The establishment of new procedures under the Commission on State Mandates (Chapter 1459, Statutes of 1984) has continued this process. It requires local agencies to assume both the burden and the cost of getting mandate reimbursement. For each new mandate this requires yet another new claim process; and that, in turn, results in yet another separate mandated activity.

Summary

The claiming procedures established by the legislature require additional activities to be performed by local agencies both as part of each new mandate and as a separate administrative process mandated by the state. Chapter 486 required additional procedures under the Board of Control and Chapter 1459 revised the procedures again under the Commission on State Mandates. Despite the requirements of Article XIII B and the lack of any legislative or constitutional restrictions, costs incurred because of these requirements have not been repaid.

Since the state may not avoid its constitutional obligations by imposing conflicting legislative barriers, we request that all costs incurred by local agencies because of the current claiming requirements be declared a state mandate.

Declaration

I, Paul Robinson, am a Senior Accountant for the Auditor-Controller/Treasurer's Office and a member of the CSAC SB 90 Committee. It is my responsibility to assist with the coordination and processing of state-mandated claims for Fresno County. All such claims are submitted to the state through the Auditor-Controller/Treasurer.

I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to matters which are therein stated as information and belief; and as to those matters, I believe them to be true.

Paul Robinson
Signature

11/26/85
Date

County of Fresno
Test Claim: Chapter 486, Statutes of 1975, and
Chapter 1459, Statutes of 1984

MANDATE COSTS

Fresno County has incurred costs for preparing state-mandated claims. Part of these costs include employee time in gathering and maintaining cost statistics, preparing schedules, and submitting claim documents. While these costs should exceed $200 per year, precise figures have not yet been finalized. However, the cost of having claims prepared by David M. Griffith and Associates, Ltd., is listed below:

Fiscal Years	Contract Amount	Comments
1984-85	$ 8,000 - 9,100	Regular Mandates
1984-85	$17,500	AB 504
1985-86	$15,000	November 30th claims

Declaration

I, Paul Robinson, am a Senior Accountant with the Auditor-Controller/Treasurer's Office and have compiled mandate financial data for these claims. I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to any matters which are therein stated as information and belief; and as to those matters, I believe them to be true.

Paul Robinson
Signature

11/26/85
Date

DECLARATION OF JAMES M. APPS
Department of Finance
Claim No. CSM 4204

I, James M. Apps, say and declare that:

1. I am currently employed by the State of California, Department of Finance, am familiar with the duties of that department and am authorized to make this declaration on behalf of the department.

2. Section 10, Article IV of the California Constitution reads in pertinent part as follows:

   "Each bill passed by the Legislature ... becomes a statute if it is signed by the Governor."

3. Section 6, Article XIIIB of the California Constitution read 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 provide a subvention of funds to reimburse such local governments for the costs of such program or increased level of subvention of funds to 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.

4. Section 6, Article XVI of the California Constitution reads, in pertintent part, as follows:

   The Legislature shall have no power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation water.

5. Chapter 1406, Statutes of 1972 (SB 90, Dills) added Section 2164.3 to the Revenue and Taxation Code to read in pertinent part as follows:

   2164.3 (a) The state shall pay to each county, city and county, city and special district an amount to reimburse the county, city and county, city or special district 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.

   (b) Any new state program or increased level of service of an existing mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, and special districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, and special districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdiction by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction to verify the actual costs of state-mandated programs.

6. Chapter 1406/72 contained an urgency clause and was signed by the Governor on December 18, 1972.

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

1/30/86 Sacramento CA
Date and Place

James M Apps
Signature

DECLARATION OF GLEN BEATIE

I, GLEN BEATIE, declare:

1. I am the Assistant Chief, Bureau of Mandated Cost Programs, Division of Accounting, State Controller's Office. My business address is 1227 "O" Street, Room 500, Sacramento, CA.

2. I am authorized to make this declaration on behalf of the State Controller's office.

3. I have read the foregoing document and I know its contents. The matters stated therein are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

4. In my position as Assistant Bureau Chief I am joint custodian of the records maintained by the Bureau of Mandated Cost Programs.

5. The copies appended hereto as Attachments A through D are true and correct copies of records maintained by the Bureau of Mandated Cost Programs.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Sacramento, California, on January 17, 1986.

Glen Beatie

GB/lb

RESPONSE TO THE STATE CONTROLLER AND DEPARTMENT OF FINANCE ANALYSES OF CLAIM NO. CSM-4204

In response to the December 5, 1985, letter from the Commission on State Mandates, representatives of the Department of Finance and the State Controller have recommended that Claim No. CSM-4204 from Fresno County regarding the Mandate Reimbursement Process (Chapter 486/75 and 1459/84) be denied. The justification for this negative reaction appears to be based primarily on two theories: (1) that the reimbursement process was establised prior to January 2, 1973, and (2) that the statutory process is permissive, not mandatory.

The purpose of this response is to rebut these allegations and to reiterate Fresno County's contention that reimbursement of claiming costs is both legally and morally required.

The Pre-1973 Process

1. One of the contentions is that the basic claiming process was actually established by Chapter 1406, Statutes of 1972; and since this law was not "mandated by legislative action after January 1, 1973," any new claiming costs mandated by the State need not be reimbursed. First, we do not agree that Chapter 1405 is relevant in this regard. (This point is discussed in more detail below.) However, even if it were, the language of the applicable sections indicate that claiming cost should have been paid even under that law; and failure to do so resulted not from a strict interpretation of the code but from discriminatory policies that remain inconsistent with related administrative procedures.

   Chapter 1406, the "Property Relief Act of 1972" featured many legal revisions. One was the addition of Chapter 1.5 to Part 4 of Division 1 of the Revenue and Taxation Code. Included within that addition was section 2164.3, which alone discussed state-mandated programs. This section stated, in relevant part, that the "state shall pay ... for the <u>full costs</u>" (underlining added) of mandated programs. It is our contention that "full costs" means exactly what it says -- all costs (direct, indirect, proximate) resulting from mandates; and claiming costs are a direct result of this process. I.e., but for each mandate, no claiming costs would arise.

Support for this contention is even found in state reimbursement policies for similar programs. For example, claiming costs are paid by the Controller for cases under Penal Code Section 4700, although the language of that section is arguably more restrictive than Section 2164.3. In a memo dated January 7, 1986, Peter A. Baldridge declared that claiming cost should be treated as "direct costs." Not only does that mean that the claim preparation costs incurred by the County employees must be paid by the state, but "reimbursement for the costs incurred by the county for claim preparation by private consultants appears to be legally authorized."[1/]

We contend that the opinion of Mr. Baldridge is correct, that claiming costs are indeed direct costs, and that direct costs must be reimbursed -- even under the language of Chapter 1406.

2. Even though Chapter 1406/72 supports Fresno County's request for reimbursement, it is the events since 1973 that have primarily affected local agencies. First, Chapter 1406's mandate language was limited in nature and intended to compensate local agencies for revenue losses resulting from other changes contained in that legislation. Subsequent laws revised the scope and complexity of the claiming process by imposing new costs and duties upon local agencies. For example, the current claiming instruction for Underground Storage Tanks (No. 86-1) is 31 pages in length and may require the use of a professional consultant if all its technicalities are to be correctly addressed. Both these procedures and the resulting cost impact were created after 1973. In fact, there are cases where local agencies have not submitted claims because the filing costs are prohibitive. In short, without reimbursement of these direct costs which will be incurred only because of the mandated program, some agencies will not be able to obtain the reimbursement they are constitutionally entitled to receive.

Second, whatever claiming procedures may have been enacted prior to 1973, they cannot be used to disclaim new costs resulting from subsequent state activity. The claiming process becomes a part of each new act. Each new program is a new mandate. The claim costs and procedures are likewise new and unique. Indeed, new parameters and guidelines, new claiming instructions, and new county activities are incurred with each new program or higher level of service; and as such, they require a higher level of county activity and increased costs in and of themselves.

Third, even if one were to (incorrectly) contend that Chapter 1406 is relevant, it applied only to specific situations. According to the Department of Finance's own analysis, the law had nothing to do with unfunded mandates and, as such, all costs related to those programs are caused by subsequent laws. The concept of funded and unfunded mandates should not be treated as inseparable Siamese twins just because both programs eventually require claims to be filed with the Controller. At a minimum, Finance's assertions confirm that test claim cost resulted from post-1973 legislation.

Fourth, whatever procedures may have existed before were revoked by Proposition 4. With the enactment of Article XIII B, the constitution, not the legislature, defined mandate obligations.[2/] Just as voluntary county programs that are subsequently mandated by the state become reimbursable, so the constitution supplanted the legislature's funding discretion and made reimbursement of these cases mandatory. The effect was the same as though the legislature had enacted a law in 1972, repealed it in 1974, and then enacted similar provisions in 1975. Even if the language of the 1975 law were the same as the 1972 version, it would now be a reimbursable mandate even if the older version (because of it's date) were not. In short, the state may not pass a new law that is the same as or an addition to a pre-1973 code and, in so doing, absolve itself of financial responsibility. Thus, a break in the continuity of action - however brief or theoretical - creates a new law; and that is what the passage of Article XIII B did to the prior SB-90 process. (This fact appears to be conceded by the legislature in its Government Code Section 17552 segregation of mandates enacted after January 1, 1975, from older laws.)

Fifth, since Article XIII B was enacted by the voters, not the legislature, it cannot be stated that reimbursement of claiming costs was unintended. From the electorate's standpoint, payment of claiming costs could have been assumed to be part of this process. After all, taxpayers are familiar with the need to comply with state laws; and they also know that costs incurred in the preparation, for example, of income tax returns will be offset as a deduction. In addition, as found in Attachment E, the Legislative Analyst explained to the voters that "new programs or higher levels of services" meant that the state was required to pay for "local costs incurred <u>as a result of</u> state mandates" (underlining added); and claiming costs are definitely a result of each new mandate. Therefore, since these costs have not been specifically excluded in the language of Article XIII B nor in any of the mandate statutes, they should be reimbursed.

Sixth, the statutes listed as the basis for this test claim established new and added procedures not mandated before. The Controller points to Section 18.6 of Chapter 486, which espouses the legislature's intent that "the provision of Section 2207 as added to the Revenue and Taxation Code by this act are declaratory of existing law." However, this does not mean that this chapter was not a mandate. First, the legislature's declaration is self-serving and not conclusive. The question is not whether the legislature intended to create a mandate but rather whether it actually created one. The courts have found mandates even when the legislature claimed there were none.[3] Second, even if the declaration were accepted at face value, it applies only to Section 2207. That section merely defines "costs mandated by the state," it has nothing to do with the new procedures established for reimbursing that process. Contrary to the Controller's allegation, by not including any other sections in this disclaimer, the legislature actually affirmed that the new process was not part of the existing law. Third, the Legislative Counsel's analysis of Chapter 486 (AB 1375) specifically states that it changes existing law "by establishing a new procedure for local agencies to make claims for reimbursement against the state" (underlining added).

Mandatory Nature of the Claims Process

In language reminiscent of the death sentence appeals of Caryl Chessman, it has been alleged that claiming cost are the fault of the county. That is, if you don't want the costs, don't file the claims. We disagree with the contention that this is a voluntary process.

1. The reimbursement process is mandatory upon the state. Article XIII B uses the term "shall" when talking about the subvention of mandate funds. The only "permissive" instances relate to mandates enacted prior to January 1, 1975, and to the two other constitution exceptions that do not apply to this claim.

2. The language of the mandate statutes enacted after 1973 intend a mandatory process. For example, the Revenue and Taxation Code establishes when claims must be filed[4] and dictates financial penalties for delinquent claims.[5] It complicates the claiming process by requiring offsets for cost savings.[6] Indeed Section 2131(d) uses the mandatory "shall" language when talking about local agencies having to submit claims in the form required by Section 2218.5; and Section 2231 specifically states, "Claims for direct and indirect costs ... shall be filed in the manner prescribed by the State Controller." Similar language is found in the new

Government Code provisions; e.g., Section 17552 states that its chapter shall provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state ...." Similarly, Section 17555 states that claims "shall be submitted in a form prescribed by the commission." (Underlining added).

3. If local agencies do not submit claims as required by legislature, they will not get paid; and if they are not paid, the law is no longer enforcable. In short, the burden of paying for mandates is entirely the responsibility of the state, and the constitution does not authorize the shifting of any part of the cost to the local agencies. Whatever procedures are dictated for that purpose must be paid for by the state. To argue otherwise is to endorse anarchy.

Miscellaneous Factors

1. Finance expressed concern that "clearly frivolous claims" might be submitted and paid for by the State if the claiming process were declared a mandate. This need not be the case. Even now the Commission's regulations stipulate that it may charge the costs of certain reviews to the unsuccessful requesting agency.[7/] Also, in civil actions, it is the winning party that may recover its legal costs, not the loser.[8/] Since these costs would not have been incurred but for the state's failure to voluntarily obey the law and since proceedings for cost recovery tend to be quasi-judicial in nature, the state should foot the bill when county allegations are affirmed.

2. Finance also states that administrative procedures are required to prevent a gift of public funds under Article XVI, Section 6. Again we have no objection to the state fulfilling its constitutional requirements, but nowhere in that section does it specify that claims must be submitted. Nor does it direct that the procedures that are developed must be paid for by anyone other than the state. Hence, the state may develop reasonable procedures for obeying the law, but it may not make local agencies pay for them.

3. Finance states that "there is no requirement that local entities submit claims to the CSM." This is clearly incorrect. Chapter 1459, through Government Code Section 17552, states that its 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". The allegation that remedial legislation is an alternative is not only impractical, but it ignores the legislature's own directive.

4. The Department of Finance also implies in its response that since the state's procedures are "reasonable", there is no mandate. If reasonableness were a criteria, then one might conclude that unreasonable procedures would be reimbursable; and there are grounds for arguing that the current claiming maze is unreasonable. Fortunately, reasonableness is irrelevant to the mandate criteria; i.e., Article XIII B does not exempt reasonable mandates from its reimbursement directive. All mandate procedures must be reimbursed, whether reasonable or not.

5. Furthermore Department of Finance points to the new Apportionment System in defending the state's attempt to reduce the complexity and costs of the mandate reimbursement process. In so doing, however, it merely supports our contention that other means were available to provide the reimbursement required by Article XIII B. In short, the state selected the procedures which local agencies must follow and, therefore, the state must pay for the resulting costs.

6. Finance even describes the claiming process as merely "a mechanism for the orderly transfer of funds," one that allegedly does not involve any "programmatic change or increase." This assertion states a common mandate misconception, i.e., that the new program or higher level of service relates to the product being conferred on the ultimate recipient. In actuality, reimbursement is based on the action required by the provider (i.e., the local agency) regardless of whether any qualitiative benefits result.

   In this same regard, even if one were to assume that the claiming process were not a mandate in and of itself, the claiming requirement nevertheless merges with each new state-mandated program that goes into effect. As such, the claim laws become a catalyst mandating new costs and duties on local agencies. They are, in the words of Chapter 1459, one of the "costs incurred <u>as a result of</u> a mandate" (underlining added), which the law requires to be reimbursed as the "costs arising from a statute" mandating a new program or higher level of service.9/

Conclusion

1. The mandate claiming process is a procedure selected by the state to fulfill both its legislative and constitutional requirements. Claiming costs are the direct result of the mandate system and, therefore, must be reimbursed to the local agencies.

2. The state is not excused from this obligation because of earlier laws. Not only does Chapter 1406/72 require the payment of claiming cost but subsequent changes produced new procedures mandating reimbursable activities from the claiming entities.

3. The claiming process is not voluntary. The state's requirements are mandated by the constitution. Similarly, the directives adopted by the legislature require local agencies to use only those claiming procedures developed by the State Controller and the Commission on State Mandates.

Declaration

I, Paul Robinson, a Senior Accountant for the Auditor-Controller/ Treasurer's Office, certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to matters which are therein state as information and belief; and as to those matters, I believe them to be true.

Paul Robinson
Signature

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Date

Footnotes

1. See page C-2.
2. 68 Ops. Cal. Atty. Gen. 246.
3. See, for example, City of Sacramento v. State (App. 3 Dist. 1984) 203 Cal. Rpt. 258, 156 C.A. 3d 182.
4. Revenue and Taxation Code Section 2218.5.
5. Revenue and Taxation Code Section 2238.
6. Revenue and Taxation Code Section 2256.3.
7. See, for example, Section 1184.11(c) of the new regulations.
8. E.g., Code of Civil Procedure Section 1031.
9. Government Code Section 17610.

CHAPTER 1406, STATUTES OF 1972
SECTION 2164.3

Finance may request data from any government jurisdiction to be used to prepare the population estimate required by this section. The department may develop, or contract for the development of, additional information if, in the opinion of the department, such additional information may make an estimate feasible.

If any jurisdiction fails to supply the requested data, the Department of Finance is not required to provide an estimate for that jurisdiction, but may do so using the method deemed most appropriate by the Department of Finance.

2164. The state shall annually reimburse cities and counties for sales or use tax exemptions enacted into law after the effective date of this act. The reimbursement shall be made, when appropriated by the Legislature as follows:

(a) For each legislative bill which includes a sales or use tax exemption, the Director of Finance shall estimate the yearly net loss of revenue to local government due to the bill.

(b) Twenty percent of the local net loss shall be distributed to the counties in the same ratio as the total amount of sales and use taxes collected in each county is to the whole. This amount of money shall be used for the purposes specified in Chapter 1400 of the Statutes of the 1971 Regular Session.

(c) Eighty percent of the local net loss shall be distributed to cities, counties and cities and counties in the same ratio as the distribution of the cigarette tax money as specified in Section 30462 for cities, counties, and cities and counties.

(d) The distribution made under this section shall be made at the same time and in the same manner as such cigarette tax distributions.

(e) Any legislation which proposes a sales or use tax exemption but does not contain an appropriation as described in this section shall be null and void.

2164.3. (a) The state shall pay to each county, city and county, city and special district an amount to reimburse the county, city and county, city or special district 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.

(b) Any new state program or increased level of service of an exising mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, and special districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, and special districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental jurisdiction's estimate of its cost for the mandated program for the

fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdictions by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction to verify the actual costs of state-mandated programs.

(d) The state shall pay to each county, city and county, city and special district, the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Cities, cities and counties, counties, and special districts shall be reimbursed in the same manner as provided in subdivisions (b) and (c).

(e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a county, city and county, city, or special district.

(f) If a city, city and county, county or special district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local governmental jurisdiction for such mandated service or program, and the local governmental program, and the local governmental jurisdiction shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

2164.5. Any funds received by a unit of local government pursuant to this chapter may be used for any local purpose of such unit and may, but need not necessarily, be used for purposes of general interest and benefit to the state.

OPINION OF PETER A. BALDRIDGE ON THE REIMBURSABILITY OF CLAIMING COSTS

State of California — Kenneth Cory, State Controller

To : W. C. Chan — Date: January 7, 1986

Place:

From : Peter A. Baldridge

Subject: Claim Preparation and Holding Cell Costs -- Penal Code § 4700

This memo responds to two opinion requests dated November 20, 1985, regarding reimbursement under Penal Code Sections 4700, 4700.2, 4700.5 and 6005.

You asked whether:

1. the cost of claim preparation performed by a consultant under contract is reimbursable and, if so, is reimbursement authorized to the extent that the amount claimed exceeds the cost that would have been incurred if county personnel performed the same function?

2. the cost of holding a state inmate in a courthouse "holding cell" during the proceeding is reimbursable and, if so, could the costs be determined in like manner as the "Daily Jail Rate"?

Section 4700, subsection(a), authorizes cities and counties in specified proceedings related to state prisoners to send to the Controller for reimbursement a statement of "all the costs incurred by the county or city . . . for the preparation of the trial, pretrial hearing, and actual trial of such case . . . [and] all guarding and keeping of such prisoner, while away from the prison . . ."

Subsections (c) and (e) of Section 4700 provide:

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"(c) The Controller shall reimburse the county or city for costs of prosecution based upon all operating costs of the county or city incurred in the prosecution of the case, including a proportional allowance for overhead . . ."

* * *

"(e) The cost of detention in a county or city correctional facility shall include the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities." (Emphasis added.)

Sections 4700.2, 4700.5 and 6005 similarly authorize statements of all the costs incurred by the city or county where applicable. Unlike § 4700, however, none of these sections specifies what cost factors are to be utilized in determining the cost of detention. Of course, detention costs as they are commonly understood would not be incurred under § 4700.5.

This office has already concluded that the cost of preparing claims for reimbursement is also reimbursable under Section 4700 because of a long-standing administrative interpretation of that section by the Department of Corrections, which administered the program for forty years under substantially similar provisions. (See memo to W. C. Chan from Phil Bird, March 16, 1983.) In response to that memo, the State Controller's Office has allowed the cost of preparing claims under Sections 4700.2, 4700.5, and 6005 as well.

The question now is whether the same result would pertain where the claims are prepared by a consultant paid by the county under a contract as opposed to county personnel. In my view, it would. Claim preparation has long been treated as a direct cost under these programs. The counties or cities filing claims incur claim preparation expenses whether private consultants or public employees are used. They are entitled to be reimbursed for the direct costs they incur. Therefore, reimbursement for the cost incurred by the county for claim preparation by private consultants appears to be legally authorized.

Further, it appears such reimbursement is authorized even if it exceeds what would be paid if the county utilized county personnel. Nothing in any of these sections creates any limit on reimbursement where private consultants are used. Of course, the Legislature could not have intended the term "all the costs incurred by the county or city" to require reimbursement of costs which are clearly excessive or unreasonable. Such an interpretation would lead to absurd results. Thus, there appears to be a basis for reducing such a reimbursement claim if the amount claimed is clearly unreasonable or excessive.

As for your second question, the cost of detaining a state inmate or ward in a courthouse holding cell is reimbursable. Sections 4700 and 6005 authorize reimbursement for the cost of "all guarding and keeping of such prisoner." Section 4700.2 authorizes reimbursement for all costs incurred by the sheriff for custody and other direct costs. Thus, if the county incurs a cost in detaining a prisoner at the courthouse or elsewhere, the cost is reimbursable.

You asked whether the rate of reimbursement may be determined in like manner to the "Daily Jail Rate." The "Daily Jail Rate" is a reimbursement rate derived by applying factors set forth in the "Daily Jail Rate Manual for Reimbursements under § 1776 of the Welfare and Institutions Code" (October, 1984), adopted by the Department of Corrections. The factors used to determine the rate are required by statute to be the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities (Penal Code Section 4016.5; Welfare & Institutions Code Sec. 1776). Section 4700 also requires that these same factors be used when claiming reimbursement for the cost of detention under that section. Thus, it appears that the factors used to obtain the "Daily Jail Rate" may be applied in determining reimbursement under Sec. 4700 for "holding cell" detention.

Sections 4700.2 and 6005 do not expressly provide which factors are to be used in determining the costs of detention. Therefore, the choice appears to be an accounting matter. If the factors utilized in determining the Daily Jail Rate are indicative of the actual costs incurred by the county, then those factors may be applied. I should point out, however, that one of the factors in the Daily Jail Rate appears to be overhead. Neither Section 4700.2 nor Section 6005 appear to authorize reimbursement for indirect costs. Unlike Section 4700, they contain no provision for such reimbursement. Since reimbursement of overhead is expressly provided for in § 4700,

but not in the other sections, it appears the Legislature did not intend to authorize reimbursement of indirect costs under §§ 4700.2 and 6005.

One further question you posed, provided "holding cell" costs are reimbursable, is whether such costs should be deducted from the "Daily Jail Rate." This question appears to cover the situation in which the Daily Jail Rate is charged even though the prisoner is detained in the "holding cell" facility for a short time (e.g., 2 hours) for which a separate charge is levied. The Daily Jail Rate presumably is a daily rate covering a 24-hour period. The Daily Jail Rate Manual recognizes that prisoners are usually in custody only part of the first day and the last day of detention. Therefore, counties claiming under the programs covered by the manual may claim reimbursement for the first day only, unless claiming both can be justified. Similarly, a daily rate may not be appropriate where the prisoner is detained at separate facilities during a single day.

There appears to be no legal problem with calculating actual holding cell costs and then deducting that amount from the daily rate for detention at the jail on the same day to determine the proper amount of reimbursement, so long as this approach reimburses the county or city for its actual costs incurred. Whether such an approach is accurate in terms of accounting, however, is a question I am unable to address.

Please contact me if you have any questions.

PAB:df

It is a rule of statutory construction that *expressio unius est exclusio alterius* (the expression of one excludes the other). It may be argued that by prohibiting certain persons from serving on a county committee because of a potential conflict of loyalties, the Legislature has impliedly authorized all other persons to serve regardless of possible conflicts.

This rule of construction, however, has its own exceptions and "is inapplicable where its operation would contradict a discernible and contrary legislative intent" (Wildlife Alive v. Chickering (1976) 18 Cal. 3d 190, 195), "where its application could nullify the essence of the statute" (County of Alameda v. State Bd. of Equalization (1982) 131 Cal. App. 3d 374, 381), and "where no reason exists why persons or things other than those enumerated should not be included, and manifest injustice would follow by not including them" (People v. Hacker Emporium, Inc. (1971) 15 Cal. App. 3d 474, 477).

Here we believe that section 4007 serves to extend the common law rule against holding incompatible offices to situations where it would not otherwise apply: where the one position is a public office and the other is public employment.[5] As previously mentioned, two "offices" must first be found to invoke the rule. Technically, then, section 4007 does not involve incompatibility of office. We thus do not view it as an attempt by the Legislature to abrogate the rule but rather to extend it to certain public employment.[6] Moreover, we can find no basis for excluding current school board members from its prohibition.

In answer to the question presented, therefore, we conclude that a person may not simultaneously be a member of a county committee on school district organization and a member of a school district board of trustees located within the same county.

Opinion No. 85-502—September 11, 1985

SUBJECT: DISPOSITION BY COMMISSION ON STATE MANDATES OF CLAIM FOR "COSTS MANDATED BY THE STATE"—Regarding claims for "costs mandated by the state" filed with the Board of Control before January 1, 1985, and transferred to the Commission on State Mandates upon its establishment pursuant to Gov C § 17630 and based upon a statute enacted after July 1, 1980, the Commission should determine if the claim is for "costs mandated by the state" as defined in Gov C § 17514, and, if it is, allow it. If the claim does not meet the definition, the Commission should determine if it is for "costs mandated by the state" as defined in Rev & Tax C §§ 2207 or 2207.5, and, if it is, allow it. Or, if the

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[5] A county superintendent of schools is a public employee for purposes of the incompatibility of office rule. (62 Ops. Cal. Atty. Gen. 613 (1979).)

[6] In Childs v. Moses (1942) 38 N.Y.S.2d 704, 707, the court stated: "On the issue of incompatibility, if the statute and the common law can stand together, the statute should not be construed as to abolish the common law rule."

claim does not meet any of the foregoing definitions, the Commission should reject it.

Requested by: COMMISSION ON STATE MANDATES

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Clayton P. Roche, Deputy

The Commission on State Mandates has requested an opinion on the following question:

What disposition should the Commission on State Mandates make with respect to the following type of claim for "costs mandated by the state":

(1) The claim was filed with the Board of Control before January 1, 1985 and transferred to the Commission upon its establishment pursuant to section 17630 of the Government Code; and

(2) The claim is based upon a statute which was enacted after July 1, 1980, the effective date of Article XIII B of the California Constitution.

CONCLUSION

As to such a claim, the Commission should:

(1) Determine if the claim is for "costs mandated by the state" as defined in section 17514 of the Government Code, which codifies the constitutional definition, and, if it is, allow it;

(2) If the claim does not meet that definition, then determine if it is for "costs mandated by the state" as defined in sections 2207 or 2207.5 of the Revenue and Taxation Code, and, if it is, allow it; or

(3) If the claim meets none of the foregoing definitions, then the claim should be rejected.

ANALYSIS

The Commission on State Mandates was established by the provisions of sections 17500–17630 of the Government Code on January 1, 1985. Its basic purpose is to adjudicate claims filed by local agencies for costs incurred by local agencies for costs mandated by the State under the provisions of article XIII B, section 6, of the California Constitution.[1]

[1] 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."

Before discussing in any detail the Commission on State Mandates (hereinafter "Commission"), a brief discussion of the evolution of state-mandated costs is appropriate. Such costs had their genesis in the Property Tax Relief Act of 1972 (Statutes of 1972, chapter 1406), more commonly known as "S.B. 90." By virtue of that Act, as amended from time to time, the ability of local agencies to levy taxes was severely limited. As a concomitant thereto, the Legislature provided that where the state imposed or mandated new or additional costs on local agencies, these agencies would be reimbursed by the state for such costs. These provisions, that is, the successor provisions to "S.B. 90," are contained in sections 2201 through 2327 of the Revenue and Taxation Code.

In 1979, the voters adopted article XIII B of the California Constitution. That article imposes both appropriation limits and spending limits upon the state government and all local governments. Accordingly, article XIII B was superimposed upon the existing "S.B. 90" legislation contained in the Revenue and Taxation Code. By virtue of section 6 thereof, set forth in footnote 1 above, the right of local agencies to be reimbursed for state-mandated costs was raised to constitutional proportions.

A comparison of the definition of state-mandated costs as between the "S.B. 90" legislation and the Constitution discloses that the constitutional definition (see fn. 1, *supra*) is narrower than the legislative definition found in the Revenue and Taxation Code. Accordingly, local agencies have had greater rights to reimbursement under the statutory law than under the constitution.[2]

[2] With respect to local agencies, section 2207 of the Revenue and Taxation Code provides:

" '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, 1975.

(d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels required by such federal statute or regulation.

(e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure.

(f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service.

(g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of such program or service.

(h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

See also section 2207.5 of the Revenue and Taxation Code for the somewhat similar provision as to school districts.

We are asked herein to determine the disposition the Commission should make as to a claim for reimbursement of state-mandated costs based on a statute enacted after July 1, 1980 and filed with the Board of Control prior to January 1, 1985, the date the Commission was established.

We conclude that as to such a claim, the Commission should:

(1) Determine if the claim is for "costs mandated by the state" as defined in section 17514 of the Government Code, which codifies the constitutional definition, and if it is, allow it;[3]

(2) If the claim does not meet that definition, then determine if it is for "costs mandated by the state" as defined in sections 2207 or 2207.5 of the Revenue and Taxation Code, and, if it is, allow it; or

(3) If the claim meets none of the foregoing definitions, then the claim should be rejected.

An examination of the powers and duties of the Commission demonstrates that, *at least as to prospective claims*, the Commission's power to allow claims is limited to claims (1) which arise under the constitutional definition (Gov. Code, section 17514) or (2) which arise under statues enacted *before* January 1, 1975.

Thus, section 17551 of the Government Code provides:

"(a) The Commission, pursuant to the provisions of this chapter, shall 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.

"(b) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on and after January 1, 1985, that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state, as defined in section 7 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975."

And section 17552 of the Government Code provides:

"This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated

[3]Section 17514 of the Government Code provides:

"'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."

See also City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182, which interpreted article XIII B, section 6 to require reimbursement for costs incurred after July 1, 1980 based upon state mandates enacted or adopted during the "window period," that is, January 1, 1975 through July 1, 1980.

by the state as required by section 6 of Article XIII B of the California Constitution or for costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975."

And finally, subdivision (b) of section 17556 provides with respect to findings on state-mandated costs as defined in sections 2207 and 2207.5 of the Revenue and Taxation Code:

"(b) The commission may find costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, solely with regard to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975. However, such a finding shall not constitute costs mandated by the state as defined in Section 17514."

Accordingly, the new law is clear as to which claims the Commission may allow at least *prospectively*. Claims with respect to mandates which do not meet the constitutional definition (Gov. Code, § 17514) or which were not based upon a statute enacted before January 1, 1975, are excluded.

Section 17630 of the new law then sets forth its operative date. It additionally provides for the transfer of *all* pending claims for reimbursement from the Board of Control to the Commission. It states:

"The provisions of this part shall be applicable to claims for state reimbursement of costs mandated by the state on and after January 1, 1985. All claims for state reimbursement filed under Article 1 (commencing with section 2201), Article 2 (commencing with section 2225), Article 3 (commencing with section 2240), Article 3.5 (commencing with section 2250) and Article 3.6 (commencing with Section 2256) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code which have not been included in a local government claims bill pursuant to Section 2255 of the Revenue and Taxation Code enacted before January 1, 1985, shall be transferred to and considered by the commission *pursuant to the provisions of this part*."[4] (Emphasis added.)

It is thus seen that section 17630 of the Government Code provides that claims which were transferred to the Commission are to be considered "pursuant to the provisions of this part," that is pursuant to the provisions of the new law. Taken literally, that could possibly mean that the Commission would have to disallow a claim

[4]The references in the second sentence to the various articles of the Revenue and Taxation Code encompass all the provisions under which a claim might have been filed. Accordingly, it is not necessary to examine that code to determine if claims filed under some other article have been excluded from the section.

Furthermore, it is our understanding that for our purposes herein claims "which have not been included in a local government claims bill pursuant to section 2255 of the Revenue and Taxation Code enacted before January 1, 1985" merely means claims which were still undecided by the Board of Control on January 1, 1985 and, accordingly, have not been approved and referred to the Legislature for funding. In short, it is our understanding that no issue is presented as to what is to be considered as included or not included within a local governmental claims bill once the Board of Control has made its determination.

ich was based upon a statute enacted after July 1, 1980 out-of-hand *unless* the im met the criteria of section 17514, that is the constitutional criteria. In short, thing in the new law itself appears to permit the Commission to apply the definitions sections 2207 or 2207.5 of the Revenue and Taxation Code to such a claim.

In our view, however, this possible construction which arises from reading the ond sentence of section 17630 of the Government Code is refuted by the provisions section 2239 of the Revenue and Taxation Code. That section was part of the same tute which established the Commission (Stats. 1984, ch. 1459) and was clearly tended as the complementary provision to section 17630. It provides:

"(a) Except as provided in subdivision (b), the provisions of Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2225), Article 3 (commencing with Section 2240), Article 3.5 (commencing with Section 2250), and Article 3.6 (commencing with Section 2256) of this chapter relating to state reimbursement to local agencies and school districts shall be applicable to costs mandated by the state before July 1, 1980.

"(b) All claims for state reimbursement which have not been included in a local government claims bill pursuant to Section 2255 enacted before January 1, 1985, shall be transferred to and considered by the Commission on State Mandates *as claims filed pursuant to subdivision (b) of Section 17551 of the Government Code.*" (Emphasis added).

It is seen that subdivision (a) would continue and make applicable the definitions sections 2207 and 2207.5 of the Revenue and Taxation Code to pre-article XIII B aims, *except* as provided in subdivision (b).

Subdivision (b) then transfers *all* claims which were pending before the Board of ontrol on January 1, 1985 and provides that the Commission should consider them as claims filed pursuant to subdivision (b) of section 17551 of the Government ode."

It is to be recalled that subdivision (b) of section 17551 of the Government Code, hen read in conjunction with section 17556, subdivision (b), permits the Commission allow claims if they are for costs "mandated by the state, as defined in sections 2207 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an xecutive order implementing a statute enacted, before January 1, 1975." Thus, though all transferred claims would not actually meet that criteria, subdivision (b) ates that they are still to be considered as if they all did. This being so, *all* such claims ay be allowed if they in fact relate to state-mandated costs. Of necessity, the efinitions provided in the Revenue and Taxation Code would have to apply in order qualify those claims which neither met the definitions set forth in section 17514 of e Government Code, nor were based upon pre-1975 statutes.

In short, we believe section 2239, subdivision (b) of the Revenue and Taxation ode evidences a legislative intent that no pre-1985 claims are to be outlawed if they ere in fact based upon state mandates. Otherwise, subdivision (b) would be perfluous and meaningless.

Accordingly, it is concluded that as to a claim for reimbursement of state-

mandated costs based on a statute enacted after July 1, 1980 and filed with the Board of Control prior to January 1, 1985, the Commission should determine if the claim meets either the definition found in section 17514 of the Government Code or the definitions found in sections 2207 or 2207.5 of the Revenue and Taxation Code. If it does, the Commission should allow the claim. If it does not, the claim should be rejected.

Opinion No. 85-208—September 17, 1985

SUBJECT: DUTY OF REGISTERED ENGINEER TO INFORM IDENTIFIABLE POTENTIAL VICTIMS OF DETERMINATION OF IMMINENT RISK OF SERIOUS INJURY—A registered engineer retained to investigate the integrity of a building who determines, based on structural deficiences in violation of applicable building standards, that there is an imminent risk of serious injury to the occupants thereof has a duty to warn the identifiable occupants or an appropriate authority of such determinations.

Requested by: MEMBER, CALIFORNIA SENATE

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Anthony S. Da Vigo, Deputy

The Honorable Leroy F. Greene, Member of the State Senate, has requested an opinion on the following question:

Does a registered engineer retained to investigate the integrity of a building who determines, based on structural deficiencies in violation of applicable building standards, that there is an imminent risk of serious injury to the occupants thereof, and who is advised by the owner that no disclosure or remedial action is intended and that such determinations are to remain confidential, have a duty to warn the occupants or to notify the local building officials of such determinations?

CONCLUSION

A registered engineer retained to investigate the integrity of a building who determines, based on structural deficiencies in violation of applicable building standards, that there is an imminent risk of serious injury to the occupants thereof, and who is advised by the owner that no disclosure or remedial action is intended and that such determinations are to remain confidential, has a duty to warn the identifiable occupants or, if not feasible, to notify the local building officials or other appropriate authority of such determinations.

ANALYSIS

A registered civil or structural engineer may be privately retained on occasional instances to investigate the integrity of a structure. The examination might reveal such

4 Limitation of Government Appropriations — Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

LIMITATION OF GOVERNMENT APPROPRIATIONS. INITIATIVE CONSTITUTIONAL AMENDMENT. Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

Analysis by Legislative Analyst

Background:

The Constitution places no limitation on the amount which may be appropriated for expenditure by the state or local governments (including school districts), provided sufficient revenues are available to finance these expenditures. Nor does the Constitution limit the amount by which appropriations in one year may exceed appropriations in the prior year.

Proposal:

This ballot measure would amend the Constitution to:

- Limit the growth in appropriations made by the state and individual local governments. Generally, the measure would limit the rate of growth in appropriations to the percentage increase in the cost of living and the percentage increase in the state or local government's population.
- Establish the general requirement that state and local governments return to the taxpayers moneys collected or on hand that exceed the amount appropriated for a given fiscal year.
- Require the state 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.

The appropriation limits would become effective in the 1980–81 fiscal year, which begins on July 1, 1980, and ends on June 30, 1981. These limits would only apply to appropriations financed from the "proceeds of taxes," which the initiative defines as:

- All tax revenues (we are advised by Legislative Counsel that this would include those tax revenues carried over from prior years);
- Any proceeds from the investment of tax revenues; and
- Any revenues from a regulatory license fee, user charge or user fee that *exceed* the amount needed to cover the reasonable cost of providing the regulation, product or service.

The initiative would not restrict the growth in appropriations financed from other sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.

The *appropriation limit for the state government* in fiscal year 1980–81 would be equal to the sum of all appropriations initially available for expenditure during the period July 1, 1978–June 30, 1979, that were financed from the "proceeds of taxes," less amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriations limit for each succeeding year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. Thus, even if the state appropriations in a given year were held below the level permitted by this ballot measure, the appropriation limit for the following year would not be any lower as a result. The limit would still be based on the limit for the prior year, and not on the actual level of appropriations for that year.

The following types of appropriations would *not* be subject to the state limit:

(1) State financial assistance to local governments—that is, any state funds which are distributed to local governments other than funds provided to reimburse these governments for state mandates;

(2) Payments to beneficiaries from retirement, disability insurance and unemployment insurance funds;

(3) Payments for interest and redemption charges on state debt existing on January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;

(4) Appropriations needed to pay the state's cost of complying with mandates imposed by federal laws and regulations or court orders.

We estimate that the state appropriated approxi-

Continued on page 30

Source: California Ballot Pamphlet, Special Statewide Election, November 6, 1979.

mately $7.9 billion from the "proceeds of taxes" in fiscal year 1978–79, after taking into account the exclusions listed above. This amount, referred to as "appropriations subject to limitation," represents approximately 40 percent of *total* General Fund and special fund appropriations made for that fiscal year. The main reason why the state's appropriation limit covers less than half of the state's total expenditures is that a large proportion of total state expenditures represents funds passed on to local governments for a variety of public purposes. Under this ballot measure, these funds would be subject to the limits on local, rather than state, appropriations.

The *appropriation limit for a local government* in fiscal year 1980–81 would be equal to the sum of all appropriations initially available for expenditure during the period of July 1, 1978–June 30, 1979, that were financed from the "proceeds of taxes," *plus* state financial assistance received in that year, *less* amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriations limit in each subsequent year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. For each school district, "population" is defined in this measure as the district's average daily attendance.

The following types of appropriations would not be subject to the local limit:

(1) Refunds of taxes;
(2) Appropriations required for payment of local costs incurred as a result of state mandates. (The initiative requires the state to reimburse local governments for such costs, and the appropriation of such funds would be subject to limitation at the state level.);
(3) Payments for interest and redemption charges on debt existing on or before January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
(4) Appropriations required to pay the local government's cost of complying with mandates imposed by federal laws and regulations or court orders.

Furthermore, any special district which was in existence on July 1, 1978, and which had a 1977–78 fiscal year property tax rate of 12½ cents per $100 of assessed value or less, would never be subject to a limit on appropriations. Special districts which do not receive any funding from the "proceeds of taxes" would also be exempt from the limits.

Under the initiative, the limit on state or local government appropriations could be changed in one of four ways:

(1) An appropriation limit *may* be changed temporarily if a majority of voters in the jurisdiction approve the change. Such a change could be made for one, two, three, or four years, but it could *not* be effective for more than four years unless a majority of the voters again voted to change the limit.
(2) In the event of an emergency, an appropriation limit *may* be exceeded for a single year by the governing body of a local government without voter approval. However, if the governing body provides for an emergency increase, the appropriation limits in the following three years would have to be reduced by an amount sufficient to recoup the excess appropriations. The initiative does not place any restrictions upon the types of circumstances which may be declared to constitute an emergency.
(3) If the financial responsibility for providing a program or service is transferred from one entity of government to another *government* entity, the appropriation limits of both entities *must* be adjusted by a reasonable amount that is mutually agreed upon. Any increase in one entity's limit would have to be offset by an equal decrease in the other entity's limit.
(4) If an entity of government transfers the financial responsibility for providing a program or service from itself to a *private* entity, or the source of funds used to support an existing program or service is shifted from the "proceeds of taxes" to regulatory license fees, user charges or use fees, the entity's appropriation limit *must* be decreased accordingly.

If, in any fiscal year, an entity of government were to receive or have on hand revenues in excess of the amount that it appropriates for that year, it would be required to return the excess to taxpayers within the next two fiscal years. The initiative specifies that these funds are to be returned by lowering tax rates or fee schedules. In addition, Legislative Counsel has advised us that direct refunds of taxes paid would also be permitted under the measure.

Because certain types of appropriations would not be directly subject to the limitations established by this ballot measure, it would be possible for the state or a local government with excess funds to spend these funds in the exempt categories rather than return the funds to the taxpayers. For example, the state could appropriate any excess revenues for additional financial assistance to local governments, because such assistance is excluded from the limit on state appropriations. (This, in turn, might result in the return of excess revenues to local taxpayers if a local government were unable to spend these funds within its limit.) Similarly, a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal "indebtedness" under this ballot measure.

Finally, the initiative would establish a requirement that the state provide funds to reimburse local agencies

for the cost of complying with state mandates. The initiative specifies that the Legislature need not provide such reimbursements for mandates enacted or adopted *prior* to January 1, 1975, but does not require explicitly that reimbursement be provided for mandates enacted or adopted after that date. Legislative Counsel advises us that under this measure the state would only be *required* to provide reimbursements for costs incurred as a result of mandates enacted or adopted *after* July 1, 1980.

Fiscal Impact:

This proposition is primarily intended to limit the rate of growth in state and local spending by imposing a limit on certain categories of state and local appropriations. As noted above, approximately 60 percent of current state expenditures would be excluded from the limit on state appropriations, although nearly all of these expenditures would be subject to limitation at the local level. Also, some unknown percentage of local government expenditures would not be subject to the limits on either state or local appropriations. Thus, the fiscal impact of this ballot measure would depend on two factors:

(1) What the rate of growth in state and local "appropriations subject to limitation" would be, in the absence of this limitation; and

(2) The extent to which any reductions in "appropriations subject to limitation" required by the measure are offset by increases in those appropriations *not* subject to limitation.

Impact on State Government. During six of the past ten years, total state spending has increased more rapidly than the cost of living and population. Thus, it is likely that, had this measure been in effect during those years, it would have caused "appropriations subject to limitation" to be less than they actually were.

It is *not* possible to predict with any accuracy the future rate of growth in state "appropriations subject to limitation." Thus it is not possible to estimate with any reliability what effect the measure, if approved, would have on such appropriations in the future. However, based on the best information now available (July 1979), we estimate that passage of the initiative would cause state "appropriations subject to limitation" in fiscal year 1980–81 to be modestly lower than they probably would be if the initiative were not approved. This assumes that state reimbursement would only be required for state mandates enacted or adopted after July 1, 1980. If the courts ruled that reimbursement was required for mandates enacted or adopted after January 1, 1975, the impact of the measure on "appropriations subject to limitation" would be substantial. This is because the state would be required to provide significant reimbursements to local governments within this limitation. We have no basis for predicting the impact in subsequent years.

Whether this would result in a reduction in *total* state spending would depend on whether the state decided to use the funds that could not be spent under the limitation for (1) additional financial assistance to local governments (or for some other category of appropriations excluded from the limit), or (2) state tax relief. Thus, the effect of this ballot measure on state spending in 1980–81 could range from no change to a modest reduction.

Impact on Local Governments. Existing data do not permit us to make reliable estimates of either the appropriation limits that local governments would face in fiscal year 1980–81 if this ballot measure were approved, or what these governments would spend in that fiscal year if the initiative were not approved. Nonetheless, we estimate that those school districts experiencing significant declines in enrollment would have to reduce "appropriations subject to limitation" significantly below what these appropriations would be otherwise. We also estimate that most cities and counties, at least initially, would not be required to reduce the growth in these categories of appropriations by any significant amounts. However, some local governments, especially those with stable or declining populations, could be subject to more significant restrictions on their "appropriations subject to limitation."

Whether any reductions in "appropriations subject to limitation" caused by this measure would result in corresponding reductions in *total* local government expenditures and a return of excess revenues to the taxpayers would depend on whether increased spending resulted in those categories *not* subject to limitation. We have no basis for estimating the actions of local governments in this regard.

Conclusion. Thus, while a reduction in the rate of growth in state or local government expenditures may result from this ballot measure in fiscal year 1980–81, there may be instances in which no reduction in the rate of growth in an individual government's spending occurs. The impact of this measure in subsequent years cannot be estimated, although the measure could cause government spending to be significantly lower than it would be otherwise.

State of California

CSM Attachment A

Memorandum

JAN 30 1986

RECEIVED
JAN 30 1986
COMMISSION ON STATE MANDATES

To : Stephen R. Lehman
Program Anlayst
Commission on State Mandates

From : **Department of Finance**

Subject: Claim No. CSM-4204 from Fresno County regarding the Mandate Reimbursement Process (Chapters 486/75 and 1459/84).

The subject claim alleges that the statutory process which has been established for reimbursing local entities for the costs of state-mandated local programs is in and of itself a state-mandated local program whose costs are therefore also reimbursable. The Department of Finance recommends that the claim be denied because:

(1) the process for obtaining reimbursement for funded mandates was established in 1972 and is required by the California Constitution; and

(2) the statutory process for seeking reimbursements for unfunded mandates is permissive, rather than mandatory.

The essence of the claimant's argument seems to be that, although the State is under the absolute constitutional obligation to reimburse the costs of mandates on local government, the State has established a costly administrative process for obtaining that reimbursement rather than some other type of process which does not require the submittal of claims to the State Controller's Office (SCO) or to the Commission on State Mandates (CSM).

We would point out that the two chapters cited as the bases of this claim (CH. 486/74 and Ch. 1459/84) deal primarily with unfunded mandates. The original "SB 90", Ch. 1406/72 first established the system for reimbursing funded mandates by requiring the filing of claims with the SCO (see Item No. 5 in attached "Declaration of James M. Apps"). The process has undergone minor modifications since that time but remains essentially the same insofar as filing claims with the SCO is concerned.

We agree that Article XIIIB, Section 6 of the California Constitution requires the State to reimburse local government for the costs of new programs or higher levels of service mandated on them by State legislation or regulations. We would also point out that Article XVI, Section 6 of the Constitution prohibits the Legislature from making any gift or authorizing the making of any gift of any public money to any individual, municipal or other corporation whatever. In order to assure that the State funds provided to reimburse mandated costs are in fact related to the mandated activities, there needs to be some minimal administrative process for verifying the amounts claimed. We do not believe it would suffice, for example, for a representative of Fresno County to simply telephone the SCO and advise him that the State owes the County a given sum of money for mandate reimbursements. The existing system of submitting claims for funded mandates, which can them be reviewed and audited, assures compliance with both Article XIII and Article XVI.

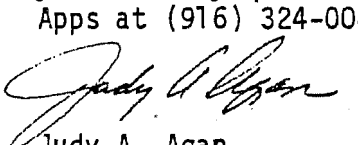
We would also point to the establishment of a "state mandate apportionments" system with the enactment of Chapter 1534, Statutes of 1985 (AB 1791, Cortese) as further evidence of the State's interest in keeping claiming requirements and costs at a minimum. This system will allow payment for certain mandates to be made without detailed claims being filed once a "base year entitlement" for each of the mandates is established based on actual cost claims submitted for a minimum of three years.

In the case of what local government may perceive as unfunded mandates, the claimant contends that they ought to be reimbursed for the costs of presenting claims to the CSM. We believe that this contention is without merit for the following reasons:

(1) there is no requirement that local entities submit claims to the CSM. If a local agency believes that a particular statute or regulation is a mandate, it has at least one other alternative available to it, e.g.; seek remedial legislation.

(2) there would be no way of precluding clearly frivolous claims from being presented and then paid for by the State. If the claimant's contention were correct, then the costs of a claim denied at any level, be it the CSM or the Legislature, would be reimbursable. Clearly, this was not intent of voters in approving Article XIIIB, Section 6.

Finally, we question whether the statutes cited as the bases of this claim actually result in a new program or higher level of service within the meaning of the Constitution. A more accurate description of their impact, we believe, is that they provide a mechanism for the orderly transfer of funds from the State to local government and, as such, involve no programmatic change or increase. The purpose for which the transfer is made is to reimburse a mandate but the transfer process itself is not a mandate. For the foregoing reasons, the Department of Finance recommends that this claim be denied. If you have any questions regarding this recommendation, please contact James Apps at (916) 324-0043.



Judy A. Agan
Assistant Program Budget Manager

cc: Phillip T. Bird, State Controller's Office
Glen Beatie, State Controller's Office
Lyle Defenbaugh, Legislative Analyst's Office
Carol Hunter, Attorney General's Office

LR:174

KENNETH CORY
Controller of the State of California
SACRAMENTO, CALIFORNIA 95805
(916) 322-4479

RECEIVED
JAN 21 1986
COMMISSION ON
STATE MANDATES

January 17, 1986

Mr. Stephen R. Lehman
Program Analyst
Commission on State Mandates
1025 P Street, Room 177
Sacramento, CA 95814

RE: CSM-4204
County of Fresno
(Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984)
Mandated Reimbursement Process

Dear Mr. Lehman:

Our response to the above test claim will be limited to Chapter 486, Statutes of 1975, and only to claim submission to this office.

Basis of Claim

Fresno County alleges that Chapter 486, Statutes of 1975 has resulted in unreimbursed state mandated costs as the result of the claimant filing reimbursement claims with this office.

Claimant alleges that the claiming process is both "(P)art of each new mandate and as a separate administrative process".

Recommendation

This office requests the Commission to deny the portion of the test claim concerning the filing of reimbursement claims with this office.

The basis for this request for denial of the claim is that the claiming process was established prior to January 1, 1973, and subsequent changes have not affected the concept that only programmatic costs are reimbursable.

Analysis

The provisions of Revenue and Taxation Code Sections 2207 and 2231 originated as part of the "Property Tax Relief Act of 1972", Chapter 1406, Statutes of 1972. These sections were renumbered by Chapter 358, Statutes of 1973 without altering the intent of reimbursement of programmatic costs

imposed. Other statutes further amended and/or added various sections to the Code, apparently without altering the basic intent of Chapter 1406, Statutes of 1972 to reimburse for new programs or increased level of services.

Chapter 1406, Statutes of 1972, established the procedures dealing with the orderly transaction of business in one area (mandated costs) between the state and subordinate entities of government.

Chapter 1406, Statutes of 1972, was enacted as an "urgency statute" (Sec. 37) and signed by the Governor on December 18, 1972. Section 2164.3 (now Section 2231) of the Revenue and Taxation Code was added which read in-part:

"(a) ...which are mandated by acts enacted after January 1, 1973..." (Emphasis added)

"(b) ...which is mandated by legislative action after January 1, 1973..." (Emphasis added)

"(c) ...claims shall be submitted by....October 31..." (which was the requirement to file a claim timely if an entity wanted reimbursement).

"(d) ...new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973." (Emphasis added)

"(e) any requirement mandated by state law of executive regulation after January 1, 1973..." (Emphasis added)

Section 37 of Chapter 1406, Statutes of 1972, declared the urgency thereof.

Chapter 1406, Statutes of 1972, established claiming procedures, that in concept remains unchanged, prior to January 1, 1973. (Attachment A)

Chapter 208, Statutes of 1973 (Attachment B), Chapter 358, Statutes of 1973 (Attachment C), Chapter 486, Statutes of 1975 (Attachment D) did not change the wording or intent of "... after January 1, 1973".

Chapter 486, Statutes of 1975, Section 18.6 states "The Legislature hereby finds and declares that the provisions of Section 2207 as added to the Revenue and Taxation Code by this act are declaratory of existing law", thereby affirming that the claiming process remains as established prior to January 1, 1973 and Article XIII B's January 1, 1975.

If there are any questions, please contact Mr. Glen Beatie at telephone (916) 323-8137.

Sincerely,

Wallace C Chan /M

Wallace C. Chan
Assistant Deputy State Controller

WCC/GB:lb

Attachments:

A) Ch. 1406/72, Sec. 2164.3; Sec. 37
B) Ch. 208/73, Sec. 51, Sec. 2164.3
C) Ch. 358/73, Sections 2205; 2206; 2231
D) Ch. 486/75, Sec. 1.8, Sec. 2207, Sec. 3, Sec. 2210, Sec. 6, Sec. 2231, Sec. 18.6

cc: Paul Robinson
Jim Apps
Lyle Defenbaugh
Carol Hunter

SC60012

Attachment A

In order to afford state agencies adequate time to prepare the reports required by this act and in order to make Section 2 of this act take effect at the proper time, it is necessary for this act to take effect immediately.

CHAPTER 1406

An act to amend Sections 17301, 17303, 17303.5, 17402, 17407, 17411, 17507, 17655.5, 17656, 17660, 17664, 17665, 17665.5, 17675, 17702, 17702.2, 17706, 17910, 18102, 18102.2, 18102.4, 18102.6, 18451, 18452, and 18455 of, to add Sections 13520.3 and 17401.5 to, and to add Chapter 6.10 (commencing with Section 6499.230) to Division 6 of, Section 18105 to, and Article 6 (commencing with Section 20902) to Chapter 3 of Division 16 of, to repeal Sections 17674 and 20814.5 of, and Article 7.1 (commencing with Section 17920) of Chapter 3 of Division 14 of, and to repeal Chapter 3.5 (commencing with Section 20910) of Division 16 of the Education Code, to amend Section 16153 of, to repeal Section 16120 of, and to repeal Chapter 1 (commencing with Section 16100) of Part 1 of Division 4 of Title 2 of, to add Section 16120 to, and to add Chapter 1 (commencing with Section 16100), Chapter 1.5 (commencing with Section 16110), Chapter 2.5 (commencing with Section 16130), Chapter 4 (commencing with Section 16160), and Chapter 5 (commencing with Section 16170) to Part 1 of Division 4 of Title 2 of, the Government Code, to amend Section 23332.5 of, to repeal Sections 218, 219, 2611.5, 6051, 6052.5, 6201, 6376, 7102, 7202, 7203, 23151, 23184, 23186, 23333, and 23501 of, to add Chapter 1.5 (commencing with Section 2161) to Part 4 of Division 1 of, and to add Sections 218, 219, 401.4, 2611.5, 6051, 6052.5, 6201, 7102, 7202, 7203, 17053.5, 23151, 23184, 23186, 23333, and 23501 to, the Revenue and Taxation Code, and to repeal Section 11450 of, and to add Sections 11006.1, 11450, and 15204.1 to, the Welfare and Institutions Code, relating to the imposition of state taxes to provide subventions to local government to compensate for property tax limitations, making an appropriation therefore, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor December 18, 1972. Filed with Secretary of State December 26, 1972.]

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

SECTION 1. This act is known and may be cited as the "Property Tax Relief Act of 1972."

~~SEC. 1.5. Chapter 6.10 (commencing with Section 6499.230) is added to Division 6 of the Education Code, to read:~~

490 41095 803

~~Finance may request data from any government jurisdiction to be~~ used to prepare the population estimate required by this section. The department may develop, or contract for the development of, additional information if, in the opinion of the department, such additional information may make an estimate feasible.

If any jurisdiction fails to supply the requested data, the Department of Finance is not required to provide an estimate for that jurisdiction, but may do so using the method deemed most appropriate by the Department of Finance.

2164. The state shall annually reimburse cities and counties for sales or use tax exemptions enacted into law after the effective date of this act. The reimbursement shall be made, when appropriated by the Legislature as follows:

(a) For each legislative bill which includes a sales or use tax exemption, the Director of Finance shall estimate the yearly net loss of revenue to local government due to the bill.

(b) Twenty percent of the local net loss shall be distributed to the counties in the same ratio as the total amount of sales and use taxes collected in each county is to the whole. This amount of money shall be used for the purposes specified in Chapter 1400 of the Statutes of the 1971 Regular Session.

(c) Eighty percent of the local net loss shall be distributed to cities, counties and cities and counties in the same ratio as the distribution of the cigarette tax money as specified in Section 30462 for cities, counties, and cities and counties.

(d) The distribution made under this section shall be made at the same time and in the same manner as such cigarette tax distributions.

(e) Any legislation which proposes a sales or use tax exemption but does not contain an appropriation as described in this section ~~shall be null and void.~~

2164.3. (a) The state shall pay to each county, city and county, city and special district an amount to reimburse the county, city and county, city or special district 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.

(b) Any new state program or increased level of service of an exising mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, and special districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, and special districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental jurisdiction's estimate of its cost for the mandated program for the

fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdictions by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction to verify the actual costs of state-mandated programs.

(d) The state shall pay to each county, city and county, city and special district, the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Cities, cities and counties, counties, and special districts shall be reimbursed in the same manner as provided in subdivisions (b) and (c).

(e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a county, city and county, city, or special district.

(f) If a city, city and county, county or special district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local governmental jurisdiction for such mandated service or program, and the local governmental program, and the local governmental jurisdiction shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

2164.5. Any funds received by a unit of local government pursuant to this chapter may be used for any local purpose of such unit and may, but need not necessarily, be used for purposes of general interest and benefit to the state.

an assessment ratio for state-assessed property which is higher than the ratio which is required for local assessments by Section 401 of the Revenue and Taxation Code, Sections 7202 and 7203 of the Revenue and Taxation Code, as added by Sections 22.15 and 22.25 of this act, shall become operative on the first day of the month next following the month in which such higher ratio is adopted; at which time, Sections 7202 and 7203 of the Revenue and Taxation Code, as added by Sections 22.1 and 22.2 of this act, shall be inoperative until the board again adopts an assessment ratio for state-assessed property which is identical to the ratio required for local assessments by Section 401 of the Revenue and Taxation Code.

(k) Sections 1.5 through 2.74, inclusive, shall be effective commencing with the 1973–4 fiscal year and fiscal years thereafter.

SEC. 35. If any provision of this act or the application thereof to any person or circumstances is held invalid, such 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. 36. Gross receipts from the sale of, and the storage, use, or other consumption in this state of material, fixtures, and supplies, obligated pursuant to engineering construction project contract or a building construction contract entered into for a fixed price prior to the effective date of this act, shall not be subject to the additional sales tax rate imposed by this act but shall be subject to the rate of tax applicable prior to this act.

For the purposes of this section, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which any party to the contract has a right to terminate the contract upon notice, whether or not the right is exercised.

SEC. 37. 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 such necessity are:

It is the purpose of this act to make substantial shifts in the tax burdens borne by the various segments of the public, in order to equalize such burdens among all taxpayers at the earliest possible time. To carry out this program and to provide long overdue property tax relief commencing with the 1973–1974 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1407

An act to amend Section 2391 of the Business and Professions Code and to add Division 10 (commencing with Section 11000) to, and to repeal Divisions 10 (commencing with Section 11000), 10.5 (commencing with Section 11901), 10.8 (commencing with Section 11940), and 10.9 (commencing with Section 11990) of, the

Attachment B

Assembly Bill No. 1267

CHAPTER 208

An act to amend Sections 16113, 16115, 16130, 16148, 16150, and 16170 of, and to add Section 16123 to, the Government Code, to amend Sections 3255, 3256, 6499.234, 10801, 10805, 10813, 11872, 13520.3, 17301, 17507.5, 17654.5, 17664, 17702, 17702.5, 17706, 17951, 18102, 18102.2, 18102.4, 18102.6, 20704, 20803, 20804, 20903, 20904, 20905, and 20906 of, to add Sections 5605, 5605.1, 5605.2, 5605.3, 10801.1, 20803.2, 20904.1, 20904.3, 20905.5, 20909.1, and 20909.2 to, to repeal Sections 5605, 5605.1, 5605.5, 5605.6, 18105, 20909, 20910, 20910.5, 20911, and 20912 of, and to add Article 1.4 (commencing with Section 885.7) to Chapter 4 of Division 3 of, Chapter 3 (commencing with Section 20450) to Division 15 of, and Chapter 3.5 (commencing with Section 20910) to Division 16 of, the Education Code, to amend Sections 218.5, 401.4, 2164.3, 17053.5, 19062, 19062.11, 23186, and 23332.5 of, and to add Section 18601.1 to, the Revenue and Taxation Code, to repeal Section 10 of Chapter 1147 of the Statutes of 1972, and to amend Section 36 of Chapter 1406 of the Statutes of 1972, relating to the financing of state and local governments, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1973. Filed with Secretary of State July 11, 1973.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, Gonsalves. Financing government.

~~Prescribes method of establishing revenue limit for newly organized~~ school districts.

Specifies new method for computing tuition charge for 7th and 8th graders being educated by a high school district.

Specifies separate computation for Santa Cruz County.

Revises provision authorizing adjustments of entitlements under educationally disadvantaged youth program based on program effectiveness.

Deletes provision authorizing adjustments of entitlements under educationally disadvantaged youth program based on program effectiveness.

Requires payments to be made pursuant to interdistrict attendance agreement and revises method of computing such payments.

Clarifies provision re salary adjustment and work scheduling in year-round school program; not operative if AB 99 of the 1973–74 session of the Legislature is chaptered prior to this enactment.

Revises method of computing penalty reduction of average daily attendance for kindergarten classes in excess of specified class size.

Provides for annual increases of elementary and high school foundation programs.

~~Adjusts elementary and high school foundation program for small-~~

prevent duplications of the exemptions within the state and improper overlapping with other benefits provided by law, county assessors shall supply information from homeowners' property tax exemption claims and county records as is specified by written request of the board, and with the concurrence of the Controller, necessary to fully identify all homeowners' property tax exemption claims allowed by the assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and spouses and the identity and location of the dwelling to which the exemption applies. The information may be required in the form of data processing media or other media and in such format as is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

SEC. 50. Section 401.4 of the Revenue and Taxation Code is amended to read:

401.4. When valuing an owner-occupied single-family dwelling and the land on which it is situated that may be required for the convenient occupation and use of such dwelling, if such dwelling is on land which is zoned exclusively for single-family home use or which is zoned for agricultural use where single-family homes are permitted, the assessor shall not value the land at any value greater than that which would reflect the use of the land as a site for a single-family dwelling.

As used in this section, owner-occupied single-family dwelling means any single-family dwelling occupied by an owner thereof as his principal place of residence on the lien date.

SEC. 51. Section 2164.3 of the Revenue and Taxation Code is amended to read:

2164.3. (a) The state shall pay to each county, city and county, city, special district, and school district an amount to reimburse the county, city and county, city, special district, or school district 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.

(b) Any new state program or increased level of service of an existing mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, special districts, and school districts as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, special districts, and school districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental jurisdiction's estimate of its cost for

the mandated program for the fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions and school districts shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction and school district to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdictions, and school districts by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction, or school district, to verify the actual costs of state-mandated programs.

(d) The state shall pay to each county, city and county, city and special district, the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Cities, cities and counties, counties, and special districts shall be reimbursed in the same manner as provided in subdivisions (b) and (c). School districts shall be excluded from the provisions of this subdivision.

(e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a county, city and county, city, special district, or school district.

(f) If a city, city and county, county, special district, or school district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local governmental jurisdiction or school district for such mandated service or program, and the local governmental program, and the local governmental jurisdiction, or school district shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

~~Sec. 34. Section 17053.5 of the Revenue and Taxation Code is amended to read:~~

~~17053.5. (a) For taxable years beginning after December 31,~~

Attachment C

Assembly Bill No. 2008

CHAPTER 358

act to add Section 43073 to the Government Code, to amend Section 11005.6 of, to add Chapter 3 (commencing with Section 2201) to Part 4 of Division 1 of, and to repeal Chapter 1.5 (commencing with Section 2161) of Part 4 of Division 1 of, the Revenue and Taxation Code, and to amend Section 2107.2 of the Streets and Highways Code, relating to taxation for the financing of government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1973. Filed with Secretary of State August 31, 1973.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2008, Knox. Financing government.

Makes substantial revisions in provisions establishing maximum property tax rates for local agencies.

To take effect immediately, urgency statute.

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

~~SECTION 1. Section 43073 is added to the Government Code, to read:~~

43073. The legislative body of any city which is encompassed entirely within the territory of a special district may elect to pay such district an amount equal to the amount such district would derive from its tax on all property within the incorporated limits of such city.

(b) If a legislative body makes an election pursuant to subdivision (a), the legislative body may increase the city's property tax rate to produce an amount equal to the amount the district would have derived from imposition of its tax on property within the city.

(c) If a city legislative body makes an election pursuant to subdivision (a), the district shall no longer impose such tax on property within the city, and upon collection of city taxes, such amount shall be paid by the city or transferred by the county auditor to the district.

(d) If the legislative body of a city makes an election pursuant to subdivision (a), the legislative body shall notify the county auditor, county assessor, and county tax collector by no later than the first day of September of the fiscal year in which such election becomes effective, and the county auditor shall not extend the stated portion of the district's tax on property within the city. Upon the request of the city legislative body, the county tax collector shall list each involved district on the property tax bill or an accompanying

~~statement, clearly indicating that the city has elected to include the~~ cost of the special district service in the city tax rate.

(e) For purposes of this section, "special district" means any special district where the county board of supervisors act as, or has appointed, the governing body of such districts providing fire or library services to one or more cities or any county library service established under Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code provided for one or more cities, if all property within the city is taxed to support such service.

(f) This section shall not apply in any case in which a city is making the payments described in this section to a district on the effective date of this section.

(g) If any additional costs are incurred by a county as a result of an election under this act by a city, such county may collect such costs from the city.

(h) This section shall apply only to cities which are in counties which have a population of 6,000,000 or more.

SEC. 2. Chapter 1.5 (commencing with Section 2161) of Part 4 of ~~Division 1 of the Revenue and Taxation Code is repealed.~~

SEC. 3. Chapter 3 (commencing with Section 2201) is added to Part 4 of Division 1 of the Revenue and Taxation Code, to read:

CHAPTER 3. MAXIMUM PROPERTY TAX RATES FOR LOCAL AGENCIES

Article 1. Definitions

2201. Unless the context otherwise requires, the definition contained in this article govern the construction of this chapter. Th definition of a word applies to any variants thereof; the singular tens of a word includes the plural.

~~2202. "Ad valorem property taxation" means any source revenue derived from applying a property tax rate to the assesse value of property.~~

2203. "City" means any city whether general law or charte except a city and county.

2204. "Classification of property" means any enumeration grouping of property by a statute which results in it being treate differently from other property for purposes of taxation.

2205. "Costs mandated by the courts" means any increased co incurred by a local agency in order to comply with a final court ord issued after January 1, 1973. "Costs mandated by the courts" do n include (i) costs incurred as a result of a judgment in an emine domain or condemnation proceeding, or (ii) costs incurred in ord to comply with a final court order mandating the speci performance, or awarding damages as a result of nonperformance any contract or agreement entered into after January 1, 1973.

2206. "Costs mandated by the federal government" means

increased costs mandated upon a local agency after January 1, 1973, in order to comply with requirements of federal statute or regulation. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government.

2208. "County" means any chartered or general law county. "County" includes a city and county.

2211. "Local agency" means any city, county or special district.

2212. "Percentage change in the cost of living" means the percentage change from April 1 of the prior year to April 1 of the current year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

2213. "Property tax rate" means any rate of tax or assessment which is levied per unit of assessed value of property. "Property tax rate" includes any rate or assessment which is levied on the value of land only, as well as any rate or assessment which is levied on the value of land and improvements.

2214. "Sales tax exemption" means any provision which causes a reduction in revenue to a city or county under Part 1.5 (commencing with Section 7200) of Division 2.

2215. "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" does not include a city, a county, a school district or a community college district.

2216. County free libraries established pursuant to Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code; areas receiving county fire protection services pursuant to Section 25643 of the Government Code; and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code, shall be considered "special districts" for all purposes of this chapter.

Article 2. General Provisions

2225. The property tax rate limits established in this chapter are established pursuant to authorization granted to the Legislature in Section 1d of Article XIII of the State Constitution and shall apply to all local agencies notwithstanding any other provision of law.

2226. It is the intent in establishing the property tax rate limits in this chapter to establish limits that will be flexible enough to allow local agencies to continue to provide existing programs; that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting, and that will afford the voters in each

2231. (a) The state shall pay to each local agency and each school district an amount to reimburse the local agency or the school district 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.

(b) Any new state program or increased level of service of an existing mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected local agencies and school districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among local agencies and school districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local agency or school district. Such claims shall be based on the appropriate local agency's, or school district's, estimate of its cost for the mandated program for the fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local agencies or school districts shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local agency or school district to reimburse for such costs.

Claims shall be submitted by affected local agencies and school districts by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local agency or school district to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local agency or school district to verify the actual costs of state-mandated programs.

(d) The state shall pay to each local agency the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Local agencies shall be reimbursed in the same manner as provided in subdivisions (b) and (c). School districts shall be excluded from the provisions of this subdivision.

(e) "Increased level of service" means any requirement

mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a local agency or a school district.

(f) If a local agency or a school district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local agency or school district for such mandated service or program, and the local agency or school district shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

2232. Any funds received by a local agency pursuant to the provisions of this chapter may be used for any public purpose.

~~Article 4. Maximum Property Tax Rates~~

2260. The maximum property tax rates for local agencies shall be those established pursuant to the provisions of this article or of Article 6, 7 or 8 of this chapter (commencing with Section 2201) and shall exclude the following from the determination thereof: (1) any property tax rate levied to pay the cost of interest and redemption charges on bonded or other indebtedness which was authorized prior to the effective date of this section, together with any reserve or sinking funds required in connection therewith; (2) any property tax rate levied to pay the cost of interest and redemption charges on bonded or other indebtedness which was authorized after the effective date of this section by the voters of such agency, together with any reserve or sinking funds required in connection therewith; (3) any property tax rate levied to pay the cost of interest charges on notes of a local agency issued in anticipation of bonds, if such bonds were authorized prior to the effective date of this section or were authorized by the voters of such agency after the effective date of this section, and if the principal amount of any such notes is payable only from proceeds of the sale of such bonds; (4) any property tax rate levied to pay the cost of interest and redemption charges on refunding bonds or on bonds issued pursuant to Section 53541 of the Government Code or Section 71960 of the Water Code, together with any reserve or sinking funds required in connection therewith; (5) any property tax rate levied to pay the cost of retirement and pension benefits provided pursuant to laws which have been approved by the voters of a local agency; (6) any property tax rate levied to pay the cost of payments or contributions which are required to be made to a special fund by specific provision of a city or county charter; (7) any property tax rate levied pursuant to a city charter procedure ordinance for the purpose of paying principal and interest on assessment bonds or for the purpose of paying annual costs of maintenance and operation of improvements financed pursuant to city charter procedure, when the levy is made in relation to benefits derived and not in accordance with the last equalized city

Attachment D

Assembly Bill No. 1375

CHAPTER 486

An act to amend Section 3501.3 of the Elections Code, and to amend Sections 29105 and 88003 of, and to repeal Section 43068 of, the Government Code, and to amend Sections 2209, 2215, 2228, 2260, 2270, 2271, 2271.1, 2287, and 2308 of, to add Sections 2206.5, 2207, 2210, 2231, 2233, 2234, 2261.1, 2271.2, and 2325.1 to, to repeal Sections 2231 and 2261.1 of, and to add Article 3 (commencing with Section 2240) and Article 3.5 (commencing with Section 2250) to Chapter 3 of Part 4 of Division 1 of, the Revenue and Taxation Code, relating to financing local agencies, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 2, 1975. Filed with Secretary of State September 2, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1375, Knox: Local agencies: state-mandated local programs and property tax limitations.

~~(1) Existing law requires the Attorney General, in preparing a~~ title or summary for an initiative measure which would require a substantial increase and does not contain a method of financing such increased cost, to state the amount of money that would be required.

This bill would require the Attorney General, in preparing a title or summary for an initiative measure which would require an increase in local agency costs, to state in such title the amount of additional financing from local agency sources that will be required ~~if such proposed initiative is adopted.~~

(2) Under existing law, the state is required to reimburse local agencies and school districts for the local costs which are mandated by state acts and executive regulations enacted and issued after January 1, 1973.

This bill would revise and clarify those provisions by defining or redefining certain terms, by establishing a new method of determining the amount of reimbursements to local agencies, and by establishing a new procedure for local agencies to make claims for reimbursement against the state. ~~The bill would also require the~~ Legislative Counsel to determine upon introduction whether each bill requires state reimbursement and in making such determination to disregard any provision in the bill which would make the reimbursement requirement inoperative. In cases where the Legislative Counsel determines that state reimbursement is required, the bill would require the Department of Finance to prepare an estimate of ~~the amount of reimbursement.~~

~~(3) Existing law also requires the Legislative Analyst to prepare impartial ballot analyses of ballot measures submitted to the voters~~

~~requirements, prior to the time the board of supervisors fixes the~~ rates of taxes on the secured roll. The revised amounts constitute the appropriations and reserves for the period. If the governing body fails, for any reason, to correct the matter, the board of supervisors shall fix the rate established pursuant to Revenue and Taxation Code Section 2260 as the tax rate for that agency, which agency shall decrease the appropriations or reserves, or both, so as to come within that tax rate limit. The revised amounts constitute the appropriations and reserves for the period.

SEC. 1.5. Section 43068 of the Government Code is repealed.

SEC. 1.6. Section 88003 of the Government Code is amended to read:

88003. The Legislative Analyst shall prepare an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government. Any estimate of increased cost to local governments shall be set out in boldface print in the ballot pamphlet. The analysis shall be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible. The analysis may contain background information, including the effect of the measure on existing law and the effect of enacted legislation which will become effective if the measure is adopted, and shall generally set forth in an impartial manner the information which the average voter needs to understand the measure adequately. The Legislative Analyst may contract with professional writers, educational specialists or other persons for assistance in writing an analysis that fulfills the requirements of this section, including the requirement that the analysis be written so that it will be easily understood by the average voter. The Legislative Analyst may also request the assistance of any state department, agency, or official in preparing his analysis. The title of the measure which appears on the ballot shall be amended to contain a summary of the Legislative Analyst's estimate of the net state and local government financial impact.

SEC. 1.7. Section 2206.5 is added to the Revenue and Taxation Code, to read:

2206.5. "Costs mandated by initiative enactment" means any increased costs mandated upon a local agency after the effective date of this section by any statute on any amendment to the State Constitution adopted or enacted pursuant to the provisions of Section 22 of Article IV of the State Constitution. "Costs mandated by initiative enactment" does not include costs which are specifically ~~reimbursed or funded by the terms of such initiative enactment.~~

SEC. 1.8. Section 2207 is added to the Revenue and Taxation Code, to read:

2207. "Costs mandated by the state" means any increased costs which a local agency or a school district 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.

~~SEC. 2. Section 2209 of the Revenue and Taxation Code is~~ amended to read:

2209. "Executive order" means any order, plan, requirement, rule or regulation issued:

(a) By the Governor, or

(b) By any officer or official serving at the pleasure of the Governor, or

(c) By any agency, department, board or commission of state government; provided that the term "executive order" shall not include any order, plan, requirement, rule or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.

"Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost ~~of replacing the facility.~~

SEC. 3. Section 2210 is added to the Revenue and Taxation Code, to read:

2210. "Law enacted after January 1, 1973," means any statute enacted by the Legislature after January 1, 1973.

~~SEC. 4. Section 2215 of the Revenue and Taxation Code is~~ amended to read:

2215. "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" does not include a city, a county, a school district or a community college district. "Special district" does not include ~~any agency which is not authorized by statute to levy a property tax~~

rate.

SEC. 5. Section 2228 of the Revenue and Taxation Code is amended to read:

2228. (a) The annual percentage change in population for special districts shall be the percentage established for the county pursuant to Section 2227. If a special district is located in more than one county, the annual percentage change for such district shall be the weighted average of the percentage change of each such county. The Department of Finance shall determine the weights to be used in determining such average. If a special district is located entirely within a city, the annual percentage change in population for such district shall be that established for such city pursuant to Section 2227.

(b) In the event that the territory of a special district is located entirely within two or more cities, the annual percentage change in population for such district shall be the weighted average of the percentage change of each of such cities, as such percentage change has been determined pursuant to Section 2227. The Department of Finance shall determine the weights to be used in determining such average.

(c) If the governing body of a special district determines that the county percentage change in population will not be accurate for such district, it may, within 30 days after May 1, request the department to prepare a special population estimate for the district. The department shall comply with such request prior to August 1, and the estimate prepared by the department shall be used to determine population change for purposes of this chapter. The district shall reimburse the department for the actual cost of preparing such estimate.

SEC. 6. Section 2231 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 2231 is added to the Revenue and Taxation Code, to read:

2231. (a) The state shall reimburse each local agency for all "costs mandated by the state", as defined in Section 2207. The state shall reimburse each school district only for those "costs mandated by the state" specified in subdivision (a) of Section 2207.

(b) For the initial fiscal year during which such costs are incurred reimbursement funds shall be provided as follows: (1) any statute mandating such costs shall provide an appropriation therefor, and (2) any executive order mandating such costs shall be accompanied by a bill appropriating the funds therefor, or, alternatively, an appropriation for such funds shall be included in the Budget Bill for the next following fiscal year.

In subsequent fiscal years appropriations for such costs shall be included in the State Budget and in the Budget Bill.

(c) The amount appropriated for such purposes shall be appropriated to the Controller for disbursement.

(d) The Controller shall disburse reimbursement funds to local agencies as follows:

(1) For the initial fiscal year during which such costs will be incurred, each local agency or school district to which the mandate is applicable shall submit to the Controller, within 45 days of the operative date of the mandate, a claim for reimbursement as well as its estimate of the costs required by such mandate for the current fiscal year. The Controller shall pay such claims from the funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated cost, and (ii) may reduce any claim which he determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit such claims to the Controller by October 31. The Controller shall pay such claims from funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated cost, (ii) may reduce any claim, which he determines is excessive or unreasonable, and (iii) shall adjust the payment to correct for any underpayments or overpayments which occurred in the previous fiscal year.

~~SEC. 8. Section 2233 is added to the Revenue and Taxation Code, to read:~~

~~2233. In the event that the amount appropriated for reimbursement purposes pursuant to Section 2231 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, he shall immediately report such action to the Department of Finance and to the chairman of the respective committees in each house of the Legislature which consider appropriations.~~

~~SEC. 9. Section 2234 is added to the Revenue and Taxation Code, to read:~~

~~2234. 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 such costs incurred after the operative date of such mandate and the local agency or school district shall reduce its property tax rate by an equivalent amount.~~

~~SEC. 10. Article 3 (commencing with Section 2240) is added to Chapter 3 of Part 4, Division 1 of the Revenue and Taxation Code, to read:~~

~~2287. A maximum property tax rate election shall be held~~ according to the law otherwise applicable to elections held by such a local agency; provided that the governing body of the local agency may authorize the use of mailed ballots whenever the local agency makes a determination that the use of mailed ballots is less costly or in any manner more feasible than other election procedures. When a mailed ballot is used, the election shall not be subject to the limitations contained within Section 2504 of the Elections Code.

SEC. 17. Section 2308 of the Revenue and Taxation Code is amended to read:

2308. The maximum property tax rate for a local agency assuming the responsibility for providing a program or service and for levying a tax to pay the cost thereof, as a result of a functional consolidation, shall be the maximum property tax rate for such agency established prior to the functional consolidation plus such additional rate as may be necessary to pay the actual costs of providing such program or service.

The Controller may audit any rate imposed under this section and if he determines that the rate exceeds a rate which would be necessary to pay the actual costs incurred as a result of functional consolidation, he shall immediately notify the local agency of such determination and the local agency shall reduce its property tax rate by an appropriate amount. In the event that a local agency fails to make such a reduction in its property tax rate, the Controller shall request the Attorney General to bring an action under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to force a reduction in the rate.

SEC. 18. Section 2325.1 is added to the Revenue and Taxation Code, to read:

2325.1. In the event that the Controller determines that an error has occurred in establishing a property tax rate levied pursuant to Article 4 (commencing with Section 2260) or Article 5 (commencing with Section 2270), he shall immediately notify the local agency of such error and the local agency shall reduce its property tax rate by an appropriate amount. In the event that a local agency fails to make such a reduction in its property tax rate, the Controller shall request the Attorney General to bring an action under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to force a reduction in the rate.

SEC. 18.5. The sum of thirty thousand dollars ($30,000) is hereby appropriated from the General Fund to the Department of Finance in augmentation of Item 61 of Chapter 176 of the Statutes of 1975. The augmentation is for additional costs incurred by that department ~~pursuant to the provisions of this act.~~

SEC. 18.6. The Legislature hereby finds and declares that the provisions of Section 2207 as added to the Revenue and Taxation Code by this act are declaratory of existing law.

~~SEC. 18.7. Notwithstanding the provisions of Item 84 of Section~~

§ 2230.5. Review of statutes enacted and executive orders issued during certain calendar year containing specified provisions: Reimbursement for net property tax revenue losses, etc., caused by sales or use tax exemption

Notwithstanding the provisions of Sections 2229 and 2230, prior to the end of each calendar year, commencing with the 1978 calendar year, the Department of Finance shall review all statutes enacted and executive orders issued during such calendar year which contain provisions relating to Sections 2229 and 2230. The department shall cause to be included in each Budget Bill the amount necessary to provide for reimbursement to local agencies and school districts for the net property tax revenue losses and for reimbursement to cities and counties for the net revenue losses caused by any sales or use tax exemption.

Added Stats 1977 ch 1135 § 6.5.

§ 2231. Reimbursement for costs of state-mandated programs

(a) The state shall reimburse each local agency for all "costs mandated by the state", as defined in Section 2207. The state shall reimburse each school district only for those "costs mandated by the state" as defined in Section 2207.5.

(b) For the initial fiscal year during which these costs are incurred reimbursement funds shall be provided as follows: (1) any statute mandating these costs shall provide an appropriation therefor, and (2) any executive order mandating these costs shall be accompanied by a bill appropriating the funds therefor, or, alternatively, an appropriation for these funds shall be included in the Budget Bill for the next following fiscal year, and the executive order shall cite the appropriate Budget Bill item or other bill as the source from which the Controller may pay the claims of local agencies and school districts.

In subsequent fiscal years appropriations for these costs shall be included in the State Budget and in the Budget Bill. In addition, appropriations to reimburse local agencies and school districts for continuing costs resulting from chaptered bills or executive orders for which claims have been awarded pursuant to subdivision (b), (c), or (d) of Section 2253 shall be included in the State Budget and in the Budget Bill subsequent to the enactment of the local government claims bill pursuant to Section 2255 which includes the amounts awarded relating to these chaptered bills or executive orders.

(c) The amount appropriated for these purposes shall be appropriated to the Controller for disbursement.

(d) The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies who would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them as follows:

(1) For the initial fiscal year during which these costs will be incurred, each local agency or school district to which the mandate is applicable shall submit to the Controller, within 45 days of the operative date of the mandate, or, if the board is requested to do so pursuant to Section 2253.4, within 45 days after the board reviews the claiming instructions for reimbursement issued by the Controller, whichever is later, a claim for payment of its estimated costs required by the mandate for the current fiscal year. If the local agency or school district does not submit the claim within the 45-day period, it may submit its claim for reimbursement as specified in Section 2218.5. The Controller shall pay these claims from the funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, and (ii) may reduce any claim which he determines is excessive or unreasonable. The amendments to this paragraph during 1978 shall apply to all claims submitted on or after January 1, 1978.

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 2218.5. The Controller shall pay these claims from funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (ii) may reduce any claim, which he determines is excessive or unreasonable, and (iii) shall adjust the payment to correct for any underpayments or overpayments which occurred in the previous fiscal year.

(3) In the case of unfunded mandates when funds are appropriated to the Controller to pay for these costs, claims for initial year costs, and subsequent years for which costs have been incurred prior to the enactment of the claims bill, shall be filed within 120 days from the date of notification by the Controller of the enactment of the claims bill. These claims shall be based upon parameters and guidelines issued by the board and as approved by the Legislature. The Controller shall promptly notify the relevant local agencies or school districts subsequent to enactment of the claims bill of the right to file these claims.

(4) Prior to payment of claims, the Controller shall only require information from local agencies or school districts that is actually necessary to perform audits.

Added Stats 1975 ch 486 § 7, effective September 2, 1975; Amended Stats 1977 ch 1135 § 7; Stats 1978 ch 794 § 1.1, effective September 18, 1978; Stats 1980 ch 1256 § 8; Stats 1982 ch 734 § 3, effective September 8, 1982, ch 1586 § 3, effective September 30, 1982.

Amendments:

1977 Amendment: Substituted (1) "as defined in Section 2207.5" for "specified in subdivision (a) of Section 2207" in subd (a); and (2) "costs" for "cost" after "mandated" in subd (2).

1978 Amendment: (1) Amended subd (b) by adding (a) ", and such executive order shall cite the appropriate Budget Bill item or other bill as the source from which the Controller may pay the claims of local agencies and school districts" at the end of the first paragraph; and (b) the second sentence of the second paragraph; and (2) amended subd (d)(1) by (a) substituting "payment of its estimated" for "reimbursement as well as its estimate of the" in the first sentence; (b) adding the second sentence; and (c) adding the last sentence.

1980 Amendment: (1) Amended subd (d) by adding (a) all that part following "local agencies" in the first sentence; and (b) "When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them"; (2)

government jurisdiction to be used to prepare the population estimate required by this section. The department may develop, or contract for the development of, additional information if, in the opinion of the department, such additional information may make an estimate feasible.

If any jurisdiction fails to supply the requested data, the Department of Finance is not required to provide an estimate for that jurisdiction, but may do so using the method deemed most appropriate by the Department of Finance.

2164. The state shall annually reimburse cities and counties for sales or use tax exemptions enacted into law after the effective date of this act. The reimbursement shall be made, when appropriated by the Legislature as follows:

(a) For each legislative bill which includes a sales or use tax exemption, the Director of Finance shall estimate the yearly net loss of revenue to local government due to the bill.

(b) Twenty percent of the local net loss shall be distributed to the counties in the same ratio as the total amount of sales and use taxes collected in each county is to the whole. This amount of money shall be used for the purposes specified in Chapter 1400 of the Statutes of the 1971 Regular Session.

(c) Eighty percent of the local net loss shall be distributed to cities, counties and cities and counties in the same ratio as the distribution of the cigarette tax money as specified in Section 30462 for cities, counties, and cities and counties.

(d) The distribution made under this section shall be made at the same time and in the same manner as such cigarette tax distributions.

(e) Any legislation which proposes a sales or use tax exemption but does not contain an appropriation as described in this section shall be null and void.

2164.3. (a) The state shall pay to each county, city and county, city and special district an amount to reimburse the county, city and county, city or special

district 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.

(b) Any new state program or increased level of service of an exising mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, and special districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, and special districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental jurisdiction's estimate of its cost for the mandated program for the fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdictions by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to

correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction to verify the actual costs of state-mandated programs.

(d) The state shall pay to each county, city and county, city and special district, the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Cities, cities and counties, counties, and special districts shall be reimbursed in the same manner as provided in subdivisions (b) and (c).

(e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a county, city and county, city, or special district.

(f) If a city, city and county, county or special district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local governmental jurisdiction for such mandated service or program, and the local governmental program, and the local governmental jurisdiction shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

2164.5. Any funds received by a unit of local government pursuant to this chapter may be used for any local purpose of such unit and may, but need not necessarily, be used for purposes of general interest and benefit to the state.

Article 2. Counties

2165. (a) Except as provided in subdivision (b), (c), (d), and (e), the maximum property tax rate which may be levied by any county shall be the property tax rate

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THE THIRD APPELLATE DISTRICT

(Sacramento)

COUNTY OF CONTRA COSTA, et al.,	)	3 Civ. 24357
Plaintiffs and Respondents,	)	(Super.Ct.No. 300784)
v.	)	
STATE OF CALIFORNIA,	)	
Defendant and Appellant.	)	

APPEAL from a judgment of the Superior Court of Sacramento County. James T. Ford, Judge. Reversed.

John K. Van De Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Jeffrey J. Fuller and Carol Hunter, Deputy Attorneys General, for Defendant and Appellant.

Thomas M. Cecil, Chief, Richard A. Elbrecht, Supervising Attorney, John C. Lamb, Staff Counsel and Mary-Alice Coleman, Legal Counsel, Department of Consumer Affairs, Division of Consumer Services; Altshuler & Berzon, Fred H. Altshuler and Marsha S. Berson, Attorneys for AFL-CIO and Franklin Silver and Kenneth Absolam, Attorneys for California Nurses Association, Amici Curiae in support of Defendant and Appellant.

Douglas J. Maloney for Plaintiff and Respondent.

James P. Jackson, City Attorney, William P. Carnazzo, Deputy City Attorney, Amici Curiae for Plaintiff and Respondent.

In this declaratory relief action the Superior Court

of Sacramento County entered a judgment declaring that 14 bills enacted during the 1980-1981 legislative session were void, and that the challenged bills enacted in 1975 and in 1978 have become unenforceable. The court reasoned that the state had failed to provide a subvention for reimbursement of the costs imposed on local governments as is required by California Constitution, article XIII B, section 6. The defendant State of California appeals contending that the plaintiffs failed to exhaust their administrative remedies, and that the contested statutes do not constitute reimbursable mandates under the constitution. We conclude that the state's position on exhaustion is the correct one and therefore reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

As we noted in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182, "[t]he question of reimbursement had its genesis in the 'Property Tax Relief Act of 1972.' (Stats. 1972, ch. 1406, § 1, p. 2931.) That act, generally known as 'SB 90,' provided for a system of limitations on local governments' power to levy property taxes, with the concomitant requirement of reimbursement to such local governments for costs mandated upon them by the state in the form of increased levels of services or programs. . . . [¶] On November 6, 1979, California voters determined to make a limitation-reimbursement system similar to 'SB 90' a part of the Constitution. By initiative measure at the special

statewide election on that date, the voters enacted Proposition 4, thereby adding article XIII B to the California Constitution . . . . The so-called 'Spirit of 13' initiative provided for limitations on the ability of all California governmental entities to appropriate funds for expenditures. (Cal. Const., art. XIII B, §§ 1, 8, subds. (a),(b).)" (Id., at p. 188.)

Fiscal relief to local governments was provided in the provision we are concerned with in this case, section 6 of 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." Article XIII B became effective on July 1, 1980. (Art. XIII B, § 10.)[1]

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[1] After the adoption of article XIII, section 6, the Legislature in 1980 amended Revenue and Taxation Code sections 2207 and 2231, and expanded the definition of "costs mandated

Footnote 1 is continued on page 4.

This action was commenced on January 11, 1982, when 38 counties and the County Supervisors Association of California (Counties) filed a complaint for declaratory relief against the State of California. The Counties set forth a list of 20 bills enacted in the 1980-1981 legislative session which they contend establish reimbursable mandates but for which no subvention of funds has been provided. They also set forth three bills enacted after January 1, 1975, but before the effective date of article XIII B, which they allege establish reimbursable mandates but for which no subvention of funds has been provided. The Counties sought a declaration that the challenged statutory enactments are invalid, unconstitutional, and/or unenforceable. The state, represented by the attorney general, answered the complaint by denying that the challenged bills were invalid or unconstitutional, and asserting as an affirmative defense that the Counties had failed to exhaust their administrative remedies.

Before trial the Counties withdrew their challenge to four of the bills enacted in the 1980-1981 legislative session.

Footnote 1 continued.

by the State" by including certain specified statutes enacted after January 1, 1973. (Stats. 1980, ch. 1256, § 5, p. 4248.) In County of Los Angeles v. State of California (1984) 153 Cal.App.3d 568, 573, the court concluded that "this reaffirmance constituted the exercise of the Legislative discretion authorized by article XIII B, section 6, subdivision (c), of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975]."

A court trial was held with regard to 16 bills enacted in that session, and 3 bills enacted in 1975, 1976, and 1978. The trial court issued a tentative decision holding that the Counties had failed to exhaust their administrative remedies by failing to submit their claims to the Board of Control as provided for in Revenue and Taxation Code sections 2231 and 2250 and following. The court also indicated an intent to hold that article XIII B does not apply to bills enacted before its effective date.

The Counties moved for a new trial. In support of their motion they submitted a written statement of the Board of Control concerning a claim of the Pajaro Valley Unified School District for reimbursement for costs mandated by a state regulation (Cal. Administrative Code, tit. 5, §§ 90-101, relating to voluntary desegregation). The board determined that the regulation did not impose reimbursable state mandated costs. In doing so the board stated that its authority to review claims for reimbursement was limited to statutory provisions for reimbursement under provisions in the Revenue and Taxation Code and did not extend to claims under the Constitution.[2] This decision was submitted in support of

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[2] That piece of evidence added nothing to the dispute. First of all, the decision of the Board of Control was not rendered until May 26, 1983, more than a year and five months

Footnote 2 is continued on page 6.

Counties' argument that they had no administrative remedy for claims arising under the Constitution. A new trial was granted.

Upon a new trial the court held that the Board of Control does not have the authority or jurisdiction to determine whether a statute contains a reimbursable mandate under the Constitution. The court further found that even if the board had such authority it would have been futile for the Counties to have exhausted their administrative remedies. The court held that 14 bills enacted during the 1980-1981 legislative session contained reimbursable mandates and since the Legislature has not provided a subvention of funds the court found those acts to be void. With respect to acts enacted in 1975 and in 1978, the court held that the acts were valid when enacted but that since the Legislature had failed to provide a subvention of funds after the effective date of article XIII B, the acts had become unenforceable.

Judgment was entered holding the following legislative enactments to be void: (1) Statutes of 1981, chapter 1141, relating to taxation; (2) Statutes of 1981, chapter 617,

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Footnote 2 continued.

after this lawsuit was filed. It hardly justifies the failure of the Counties to seek their administrative remedy before they filed this suit. Secondly, the Board only "determined that its authority to review alleged mandates was limited to the authority delineated in the Revenue and Taxation Code, Section 2201 et seq." The Counties have failed to show how that determination precluded the Board from granting relief in this case.

relating to fire inspection records; (3) Statutes of 1981, chapter 618, relating to juvenile courts; (4) Statutes of 1981, chapter 1111, relating to parole; (5) Statutes of 1981, chapter 846, relating to real property; (6) Statutes of 1981, chapter 1088, relating to the California Debt Advisory Commission; (7) Statutes of 1981, chapter 962, relating to environmental quality; (8) Statutes of 1981, chapter 332, relating to juvenile court law; (9) Statutes of 1981, chapter 990, relating to developmental disabilities; (10) Statutes of 1981, chapter 612, relating to local agency employer-employee relations; (11) Statutes of 1981, chapter 875, relating to minors; (13) Statutes of 1981, chapter 866, relating to public contracts; and (14) Statutes of 1981, chapter 876, relating to building standards. The judgment also declared the following legislative enactments to be unenforceable: (1) Statutes of 1975, chapter 1275, relating to acquisition of property for public use; and (2) Statutes of 1978, chapter 1146, relating to animals.

DISCUSSION

I

As we noted in City of Sacramento, the concept of reimbursement of local governmental entities for state mandated costs did not begin with the enactment of article XIII B to the Constitution. In the Property Tax Relief Act of 1972 the Legislature had earlier provided for limitations on local governments' power to levy property taxes, with a requirement of reimbursement to such local governments for costs mandated

by the state in the form of increased levels of services or programs. This statutory limitation-reimbursement scheme is contained in Revenue and Taxation Code section 2201 et seq. (Stats. 1973, ch. 358, § 3, p. 779.)[3] Section 2207 provides: "'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. [¶] (d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels above the levels required by such federal statute or regulation. [¶] (e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters

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[3] All further undesignated section references are to the Revenue and Taxation Code unless otherwise indicated.

and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure. [¶] (f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service. [¶] (g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of the program or service. [¶] (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

Section 2231, subdivision (a) provides that the state shall reimburse local agencies for all costs mandated by the state as defined in section 2207.[4] Subdivision (b) of section 2231 provides that the reimbursement for the initial

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[4] Section 2231 also provides for reimbursement to school districts for costs mandated by the state as defined in section 2207.5. We are not here concerned with the claims of any school district so we shall restrict our discussion to the provisions applicable to reimbursement of local governments.

fiscal year shall be provided by an appropriation in the statute mandating the costs or, in the case of an executive order, by a bill appropriating the funds which must accompany the order or alternatively by a provision in the Budget Bill for the following fiscal year. In the following fiscal years the costs are to be included in the State Budget and in the Budget Bill. The State Budget and the Budget Bill shall also include appropriations for reimbursement of claims which have been awarded pursuant to section 2253, subdivisions (b), (c), and (d). The procedure for the submission and payment of claims by local governments is also set forth in section 2231.

Section 2240 and the sections following it set forth the procedure for determining and appropriating funds for the reimbursement of local governments. Essentially, the Legislative Counsel is to make the initial determination whether a bill will require reimbursement. (§ 2241.) If it will then the Department of Finance is to estimate the amount of reimbursement which will be required. (§§ 2242-2243.) In every subsequent fiscal year the State Budget and the Budget Bill shall contain appropriations for reimbursement of such costs. (§ 2245.) The Department of Finance and the Legislative Analyst are to make yearly reports to the Legislature with respect to unfunded statutes to aid in determining whether reimbursement is in fact required and whether the mandate should be repealed. (§§ 2246, 2246.1.)

Section 2250 and those following it provide a hearing

procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in Part 4 (commencing with Section 13900) of Division 3 of Title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a "test claim" or a "claim of first impression." (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.)

At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons

for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local

entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)[5]

Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) "Costs mandated by the state" are defined as "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

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[5] At the time this litigation commenced section 2255 did not contain any alternative for the Legislature to appropriate funds to pay for mandates found by the board, and did not provide for a suit to declare the mandate void and enjoin its enforcement. (Subds. (b) and (c).) These provisions were added in 1982. (Stats. 1982, ch. 327, § 147, pp. 1480-1481; Stats. 1982, ch. 1638, § 7, pp. 6662-6663.)

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." (Gov. Code, § 17514.) The procedures before the commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; § 2239.)[6]

The Attorney General contends that exhaustion of these administrative remedies constituted a condition precedent for resort to this judicial action for declaratory relief. We agree. The doctrine of exhaustion of administrative remedies, it has been held, is not a matter of judicial discretion but is a fundamental rule of procedure. (Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 293.) "In brief, the rule is

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[6] In 1984, the Legislature established a State Mandates Claims Fund. (Gov. Code, § 17614.) Claims for which the statewide cost does not exceed $500,000 are to be paid from the fund by the Controller upon certification of parameters and guidelines by the commission. (Gov. Code, § 17610.) For purposes of these claims the fund is to be continuously appropriated without regard to fiscal years. (Gov. Code, § 17614.) The Counties suggest that the Legislature attempted, by this legislation, to limit reimbursement for state mandates to those claims which are less than $500,000 statewide, a limitation which is not found in the Constitution. They are mistaken. Claims for which the statewide costs exceeds $500,000 are not precluded; rather, the appropriation for such claims must be contained in a local government claims bill rather than a continuous appropriation without regard to fiscal years. (Gov. Code, §§ 17612, subd. (a), 17614.)

that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." (Id., at p. 292.) When no exception applies, the exhaustion of an administrative remedy is a jurisdictional prerequisite to resort to the courts. (Id., at p. 293.) The cases which so hold are legion. (See 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 234, pp. 264-265; 2 Witkin, op. cit. supra, Jurisdiction, § 69, p. 437.) As Witkin explains it, "[t]he administrative tribunal is created by law to adjudicate the issue sought to be presented to the court. The claim or 'cause of action' is within the special jurisdiction of the administrative tribunal, and the courts may act only to review the final administrative determination. If a court allowed a suit to be maintained prior to such final determination, it would be interfering with the subject matter jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative remedy has been held jurisdictional in California." (3 Witkin, op.cit.supra, Actions, § 234, p. 265; emphasis in original.) But before the doctrine can be said to be jurisdictional it must first apply to the case at issue. As the Court of Appeal explained in Ogo Associates v. City of Torrance (1974) 37 Cal.App.3d 830, "the doctrine of exhaustion of administrative remedies has not hardened into inflexible dogma. It contains its own exceptions, as when the subject matter of the controversy lies outside the administrative

agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy, and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." (Id., at p. 834, citations omitted; see also 4 Davis, Administrative Law Treatise (2d ed. 1983) The Exhaustion Problem, § 26:1, pp. 414-415.) Thus the jurisdictional sweep of the doctrine presupposes that none of these recognized exceptions applies. Consequently, the doctrine precludes original judicial actions only in the absence of those exceptions. The question in this case then is whether any of the exceptions apply here. As we shall explain, none does.

By the Property Tax Relief Act of 1972, the Legislature assumed a statutory obligation of reimbursing local governments for state mandated costs, including any costs incurred by the local government as the result of any law enacted after January 1, 1973, "which mandates a new program or an increased level of service of an existing program." (§ 2207, subd. (a), 2231.) At the same time, the Legislature provided an administrative procedure with the right to judicial review by which claims that a law requires reimbursement may be made and determined. (§ 2250 et seq.; Gov. Code, § 17500 et seq.) As a statutory requirement for reimbursement the 1972 provisions were subject to amendment or repeal by the Legislature. (County of Los Angeles v. State of California, supra, 153 Cal.App.3d at

p. 573.) Perhaps in recognition of its repealable and thus impermanent character, the People, by enacting article XIII B, have imposed a constitutional requirement of reimbursement. Yet nothing in article XIII B renders the statutory administrative procedure for hearing and determining claims void. That procedure remains a viable administrative remedy by which the local governments may claim reimbursement for state mandated costs.

The Counties contend that they are not required to exhaust the administrative remedy because they are asserting that the challenged acts are unconstitutional.[7] However, the

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[7] In contending that a failure to provide a subvention of funds renders a bill void, the Counties rely upon four cases from three other states with constitutional provisions mandating reimbursement to local governments. However, the provisions involved in those states contained markedly different language from our constitutional provision. In Missouri the provision states that "[a] new activity or service or an increase in the level . . . shall not be required by [the state] unless a state appropriation is made and disbursed . . . ." (See State v. County Court of Greene County (Mo. banc 1984) 667 S.W.2d 409, 411; Boone County Court v. State (Mo. banc 1982) 631 S.W.2d 321, 323.) In Michigan the provision states "The state is prohibited from requiring any new or expanded activities . . . without full financing . . . ." (See Delta County v. Mich. Dept. of Nat. Resources (Mich.App. 1982) 325 N.W.2d 455, 456.) In Massachusetts the provision states that a statutory mandate "shall be effective . . . only if . . . " financing is provided by the state. (See Town of Lexington v. Commission of Educ. (Mass. 1985) 473 N.E.2d 673, 675.) In those states there is no provision for any administrative remedy because the unfunded legislation is simply not effective. In contrast, the California constitutional provision requires that when the state mandates a new program or higher level of service "the state shall provide a subvention of funds to reimburse" the local government. (Art. XIII B, § 6.) The Legislature has

Footnote 7 is continued on page 18.

doctrine of exhaustion of administrative remedy applies to actions raising constitutional issues. (Security-First Nat. Bk. v. County of L.A. (1950) 35 Cal.2d 319, 321; United States v. Superior Court (1941) 19 Cal.2d 189, 195; People v. Coit Ranch, Inc. (1962) 204 Cal.App.2d 52, 57-58; Tushner v. Griesinger (1959) 171 Cal. App.2d 599, 604-608; see also 3 Witkin, op.cit.supra, Actions, § 236, p. 267; Reed, Exhaustion of Administrative Remedies in California (1968) 56 Cal.L.Rev. 1061, 1073-1074.) It is true that there is an exception when the constitutionality of the agency itself is challenged. A litigant is not required to exhaust his administrative remedies where the challenge is to the constitutionality of the administrative agency. (State of California v. Superior Court (Veta) (1974) 12 Cal.3d 237, 251.) But here the Counties are not challenging the constitutionality of the State Board of Control, the Commission on State Mandates, or even the statutory scheme for hearing and determining claims; instead,

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Footnote 7 continued.

provided an administrative remedy when the state fails to reimburse the local entity. It is only after the Legislature has deleted the reimbursement contained in the administrative agency's report and in the local government claims bill that 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." (Gov. Code, § 17612, subd. (b); see also § 2255, subd. (c), providing the mandate may be declared void and its enforcement enjoined if the Legislature deletes reimbursement from a local government claims bill funding for a mandate but does not follow one of the alternative courses of action provided for in subdivision (b).)

they are asserting that they need not submit to that procedure because the claims they assert have roots in the Constitution. Their claim is that a provision for subventions is a constitutional condition precedent to the enactment of statutes which impose local mandates. If the subvention is not included in the statute, or at least prior to the effective date of the statute, they argue, the enactment violates section 6 of article XIII B. Thus the claim asserted in this case is that the cost mandating statutes are unconstitutional and that claim does not fall within the exception to the rule that administrative remedies must be exhausted prior to resort to the courts. (Id., at pp. 249-250.)[8]

Counties emphasize that they consider article XIII B

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[8] The Counties alleged that the Board of Control (now the Commission on State Mandates) does not have the jurisdiction to consider claims under the Constitution. The trial court agreed. In fact, an administrative agency does not have the power to declare a statute unconstitutional or unenforceable. (Cal. Const., art. III, § 3.5.) But the Board of Control (now the Commission) has the power to determine whether a statute or regulation mandates a new program, or higher level of service of an existing program and whether there are any "costs" mandated by the legislation. A proceeding before the board will promote judicial efficiency by unearthing the relevant evidence and providing a record which the court may review. (See Edgren v. Regents of the University of California (1984) 158 Cal.App.3d 515, 521.) It is still the rule that a party must exhaust administrative remedies even though, if unsuccessful, he intends to raise constitutional issues in a judicial proceeding. (See Mountain View Chamber of Commerce v. City of Mountain View (1978) 77 Cal.App.3d 82, 96.) We note parenthetically that the interplay between the constitutional and the statutory provisions for reimbursement of counties in the context of a board proceeding is pending before the Supreme Court. (County of Los Angeles v. State of California, L.A. 32106, rev. gr. Sept. 19, 1985.)

to be self executing and consequently they may disregard the statutory scheme for claiming reimbursement for state mandated costs. But the fact that a constitutional provision is self executing does not relieve a party from complying with reasonable procedures for assertion of the right. While the Legislature may not unreasonably curtail or impair a right granted by a self executing constitutional provision, it may adopt reasonable procedural requirements for assertion of the right. (Vinnicombe v. State of California (1959) 172 Cal.App.2d 54, 56.) For example, former article I, section 14 of the constitution prohibited the taking or damaging of private property for public use "without just compensation having first been made to, or paid into court for, the owner." This section was self executing and under its provisions a property owner could maintain an action against a governmental entity that took or damaged his property. (Powers Farms v. Consolidated Irr. Dist. (1941) 19 Cal.2d 113, 126.) In the Powers Farms case the plaintiff brought an action against an irrigation district for damage to its property without first filing a verified claim with the district as required by the Irrigation District Liability Law (Stats. 1935, ch. 833, p. 2250). The plaintiff claimed that it did not have to comply with the claims statute because its action was based upon the self executing constitutional provision. The Supreme Court said: "But the fact that the cause of action is one of that kind does not exclude it from the operation of a claim statute,

the terms of which are broad enough to embrace it. Although the Constitution grants the right to compensation, it does not specify the procedure by which the right may be enforced. Such procedure may be set up by statutory or charter provisions, and when so established, a failure to comply with it is deemed to be a waiver of the right to compel the payment of damages." (Ibid., citations omitted.) Thus, as the high court later held in City of San Jose v. Superior Court (1974) 12 Cal.3d 447, the "fact that inverse condemnation is founded directly on the California Constitution (art. I, § 14) neither excuses plaintiffs from compliance with the claims statutes, nor renders the claims statutes unconstitutional." (Id., at pp. 454-455, citations omitted.) Similarly, former Government Code section 16047, which required an undertaking as a condition of bringing an action against the state, was held applicable to actions brought under former article I, section 14. (Vinnicombe v. State of California, supra, 172 Cal.App.2d at p. 56.)

The jurisdictional aspect of the exhaustion of remedies doctrine is based in part upon the separation of powers of the three branches of government. "The powers of state government are legislative, executive and judicial." (Cal. Const., art. III, § 3.) Under that tripartite system, the "legislative power of this State is vested in the California Legislature" (Cal. Const., art. IV, § 1); the "supreme executive power of this State is vested in the Governor" (Cal. Const., art. V, § 1); and the "judicial power of this State is vested in the

Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." (Cal. Const., art. VI, § 1.) One branch of government may not exercise the powers of another branch. "Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.)

The judicial function is to declare the law and to determine the rights of parties to controversies. (Marin Water etc. Co. v. Railroad Com. (1916) 171 Cal. 706, 711-712.) Under the separation of powers clause, the Legislature can neither exercise nor place limitations upon judicial powers. (In re McKinney (1968) 70 Cal.2d 8, 10.) The legislative function is to enact laws and to appropriate funds. (See Schaezlein v. Cabaniss (1902) 135 Cal. 466, 467; see also Mandel v. Myers (1981) 29 Cal.3d 531, 550.) Courts, by the same constitutional restriction, cannot interfere with the legislative process. (Santa Clara County v. Superior Court (1949) 33 Cal.2d 552, 559; Johnston v. Board of Supervisors (1947) 31 Cal.2d 66, 70.) And courts cannot compel legislative action. (City Council v. Superior Court (1960) 179 Cal.App.2d 389, 395.)[9]

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[9] While our branches of government are coequal they are not completely independent. While the Legislature cannot exercise judicial functions or deprive the courts of judicial powers, it may regulate procedures and place reasonable restrictions upon judicial functions. (Briggs v. Superior Court (1931) 211 Cal. 619, 627, procedure for punishing contempt; Brydonjack v. State Bar (1929) 208 Cal. 439, 443, restrictions on the admission to

Footnote 9 is continued on page 23.

An administrative procedure is part of the legislative process and it has been recognized that "'the legislative process remains incomplete' until the administrative remedy is exhausted." (Abelleira v. District Court of Appeal, supra, 17 Cal.2d at p. 295, citing Porter v. Investors Syndicate (1931) 286 U.S. 461, 468 [76 L.Ed 1226, 1230].) A judicial action before the legislative process has been completed is premature and a court is without jurisdiction until administrative remedies have been exhausted. (Abelleira v. District Court of Appeal, supra.) To hold otherwise would be to permit the courts to engage in an unwarranted interference with the legislative process. (See Santa Clara County v. Superior Court, supra, 33 Cal.2d at p. 556.) As we have recounted at length, the Legislature has provided for a procedure by which local governmental entities may present claims for reimbursement of the costs of state mandates, those claims may be determined, a subvention of funds may be provided, and the result of those proceedings may be reviewed in a judicial proceeding. Unless the Counties can establish an exception to the rule requiring the exhaustion of administrative remedies, a judicial action without exhausting those remedies must be considered premature.

Footnote 9 continued.

the practice of law.) And while the Legislature cannot act as a "supercourt," rejecting judicial decisions with which it disagrees (Mandel v. Myers, supra, 29 Cal.3d at p. 552), it may make a law to prospectively abrogate the effect of a judicial decision. (Matter of Coburn (1913) 165 Cal. 202, 210.)

The Counties assert, and the trial court agreed, that it would have been futile for them to have submitted their claims to the administrative process. In support of this contention the Counties presented evidence that out of 24 mandates found by the board and reported to the Legislature, only 8 had been funded in a claims bill. This evidence does not support the contention that it would be futile to submit the claims to the administrative procedure. The futility exception to the requirement of exhaustion of administrative remedies is a very narrow one. "Insofar as a 'futility' exception exists, as when it can be demonstrated that an agency's decision is certain to be adverse (see Ogo Associates v. Torrance (1974) 37 Cal.App.3d 830), its application is very limited. Thus, exhaustion of administrative remedy is required unless the appellant 'can positively state that the [administrative agency] has declared what its ruling will be in a particular case.' (Gantner & Mattern Co. v. California E. Com. (1941) 17 Cal.2d 314, 318, italics added.)" (George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd. (1985) 40 Cal.3d 655, 662. See also Doyle v. City of Chino (1981) 117 Cal.App.3d 673, 683; Mountain View Chamber of Commerce v. City of Mountain View, supra, 77 Cal.App.3d at p. 92.) The fact that the Legislature has provided for funding of some of the mandates found by the board, albeit only a portion, precludes the Counties from establishing the futility exception.

The Counties next assert that their remedy before the

board (now Commission) is inadequate. We disagree. The applicable procedures provide for an evidentiary hearing and decision by the board with the right to judicial review. (§§ 2252, 2253.2, 2253.5; Gov. Code, §§ 17551, 17559.) In the event it is determined that a reimbursable mandate exists then a local government claims bill must be introduced to fund such a mandate. (§ 2255, subd. (a); Gov. Code, § 17612, subd. (a).) In the event the Legislature fails to provide an appropriation to fund the mandate then the local government agency may proceed to have a judicial declaration that the mandate is unenforceable. (§ 2255, subd. (c); Gov. Code, § 17612, subd. (b).) In that event the court will have the advantage and benefit of the evidence and record compiled in the administrative proceeding. Pursuant to this procedure the Legislature cannot escape the constitutional requirement that the state reimburse local governments for reimbursable mandates.

For these reasons we conclude that the trial court erred in concluding that the Counties are not required to exhaust their administrative remedies before resorting to a judicial action with respect to reimbursable state mandates. The determination of a reimbursement claim was within the jurisdiction of the administrative agency, pursuit of the remedy would not result in irreparable harm, the agency could grant an adequate remedy, and the agency's decision was not preordained. The failure to exhaust those remedies was therefore jurisdictional. The judgment with respect to the bills enacted

during the 1980-1981 legislative session must be reversed because no claims were filed with respect to those bills. For this reason we need not and do not consider whether those bills contain reimbursable state mandates or whether they pass constitutional muster.

II

With respect to the three bills enacted before 1980 the Counties assert, and the state concedes, that administrative remedies were exhausted by the filing and determination of claims. The bills challenged for which the administrative process was completed included statutes of 1975, chapter 1275, relating to eminent domain; statutes of 1976, chapter 1139, relating to determinate sentencing; and statutes of 1978, chapter 1146, relating to animals. The trial court found that the statutes of 1976, chapter 1139, fall within an exception to article XIII B, section 6, which excepts legislation defining a new crime or legislation changing an existing definition of a crime from the reimbursement requirement. The court further determined, however, that statutes of 1975, chapter 1275, and statutes of 1978, chapter 1146, did contain reimbursable mandates and that they have become unenforceable due to the Legislature's failure to provide a subvention of funds. The state challenges these findings.

Statutes of 1975, chapter 1275, relating to eminent domain, requires a condemnor to pay for business goodwill when

condemning property. (Code Civ. Proc., § 1263.510.) The Counties contend that the payment for business goodwill constitutes a state mandated cost for which reimbursement is required. Pursuant to a claim submitted to the Board of Control, the board agreed with Counties' contention and submitted claims for reimbursement for such expenses in a local government claims bill. The Legislature deleted the claims from the claims bill, and directed that the board shall not accept or submit to the Legislature any more claims pursuant to Statutes of 1975, chapter 1275. (Stats. 1981, ch. 1091, § 3, p. 4193.) The issue is thus now ripe for decision. (§ 2255, subd. (c).)

In resolving this question we agree with and adopt the reasoning of the Court of Appeal in City of Merced v. State of California (1984) 153 Cal.App.3d 777, at page 783. There, with respect to the same statutory provisions, the court said: "We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that 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." For this reason the trial court erred in finding that Statutes of 1975, chapter

1275 constitutes a reimbursable mandate.[10]

Statutes of 1978, chapter 1146, relates to the destruction of dogs and cats. The aspect of this legislation which the Counties claim constitutes a state mandate imposing costs is the amendment of Penal Code section 597w, which prohibits the use of a high-altitude decompression chamber for the destruction of dogs and cats. The Counties contend that this removes a less expensive option in destroying dogs and cats and thus constitutes a state mandated cost. The Board of Control agreed and submitted a claim for such costs to the Legislature. The Legislature, however, deleted the claim from the local government claims bill and directed the board not accept or submit further claims based upon this provision. (Stats. 1981, ch. 1091, § 3, p. 4193.)

We hold that the trial court erred in finding that

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[10] We note that we employed analogous reasoning in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182, at pages 196-197. There the City contended that a state law requiring public employees to be covered by the state unemployment insurance law constituted a state mandate. The state countered that it was only complying with a federal requirement, did not itself mandate the coverage, and was thus not required to reimburse the City. We noted that federal law provided financial incentives and that it would have been politically unpalatable for the state to refuse to extend coverage to public employees, but nonetheless the decision was optional with the state. This precluded the state from asserting that it was only complying with a federal requirement rather than mandating a new program on local government. The same reasoning applies here: the decision to proceed in eminent domain is optional with the local government. Since the state does not mandate that the local agency incur the costs it claims, the agency is not entitled to reimbursement from the state.

Statutes of 1978, chapter 1146, constitutes a reimbursable mandate under article XIII B, section 6. The state, through its penal law, has long prohibited acts which might be described as cruelty to animals. (Pen. Code, § 596 et seq.) The state has determined that the use of high-altitude decompression chambers to destroy dogs and cats constitutes cruelty to animals, and has made it a misdemeanor to do so. (Pen. Code, §§ 597w, 597y.) This is clearly legislation defining a new crime or changing the definition of an existing crime, and as such is expressly excluded from the operation of article XIII B, section 6, by subdivision (b) thereof.

The judgment is reversed. (CERTIFIED FOR PUBLICATION.)

SPARKS, J.

We concur:

PUGLIA, P.J.

SIMS, J.

County of Fresno
Test Claim: Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984

TEST CLAIM FILING PROCEDURES

0184A
Commission on State Mandates
June 1985

COMMISSION ON STATE MANDATES
TEST CLAIM FILING PROCEDURES

Chapter 1459, Statutes of 1984, effective January 1, 1985, created the Commission on State Mandates. The commission is responsible for hearing and deciding claims which allege that local agencies or school districts are 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.

Claim Filing Requirements

When filing a claim which alleges a state mandate exists, the claim must contain all the elements shown on the test claim form.

Please note that if the narrative describing the alleged mandate involves more than a discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by testimonial or documentary evidence which shall be submitted with the claim. In developing declarations, at least the following areas should be considered:

- State the name and title of the person signing each declaration as well as his/her knowledge and expertise of the particular program area alleged to contain a mandate.
- Include statements to the effect that the law alleged to contain a mandate has been (or will be) complied with and that it resulted in increased costs and a higher level of service or a new program.
- Include a description of prior law and prior administrative practice.
- Discuss any mitigating circumstances such as the ability of local government to raise fees or assessments to pay for the alleged mandate; any known federal law or court decisions that impact the mandate, etc.
- The declaration should be signed under penalty of perjury.

Test claims will be considered incomplete and will be returned if any of the claim elements or documents are illegible, missing or incomplete.

Upon receipt of a complete test claim, a date shall be set for a public hearing within a reasonable time. In addition, state agencies will be requested to analyze the claim and must submit recommendations to the commission at least eight (8) weeks prior to the hearing. Upon receipt, the commission will forward these recommendations to all other interested parties. Any rebuttals to the recommendations must be submitted to the commission at least five (5) weeks prior to the hearing.

Commission staff will review and analyze all the information submitted and prepare a written analysis for the commission. This analysis will outline the various positions of the parties on the issues contained in the claim.

At the Hearing

Commission staff will begin the hearing on a claim by summarizing the claim. All interested parties who want to testify should then introduce themselves to the commission. The commission will indicate when presentations may commence.

At the hearing, the commission will consider requests by any person to submit additional evidence on a item. All participants should be prepared to answer questions regarding the claim in his/her area of expertise.

Upon completion of the various parties' presentations, the commission or its staff may ask questions of the parties. The commission will then make a motion and vote on the claim. The reasons for the commission's decision will be outlined in the "statement of decision" document which will be adopted by the commission at a subsequent hearing.

Parameters and Guidelines

If the commission determines that a reimbursable state mandate exists, the test claimant will be requested to prepare proposed parameters and guidelines (reimbursement guidelines) for the mandate. Commission staff is available for consultation. Ordinarily a pre-hearing conference will be arranged by commission staff after the claimant's proposed parameters and guidelines are submitted to discuss the issues to be resolved.

Statewide Cost Estimate

After parameters and guidelines have been adopted, a statewide cost estimate is developed by commission staff. The estimate is then presented to the commission for consideration and adoption. Any interested party may submit comments or a cost estimate to the commission.

The adopted statewide cost estimate is then placed into the commission's next local government claims bill.

Claims Bill

At least twice each calendar year the commission reports to the Legislature on the number of mandates it has found, the estimated statewide costs of the mandates, and the reasons for recommending reimbursement. Upon receipt of this report by the Legislature, a local government claims bill is introduced in the Legislature which requests an appropriation to pay the estimated costs of the unfunded mandates. When the Legislature appropriates funds to pay for any of these mandates the funds are appropriated to the State Controller. The controller will then issue claiming instructions to all eligible local agencies who may then file individual reimbursement claims with the controller.

In addition, reimbursement can also be provided for costs arising from a statute which contains a statement that the statute mandates a new program or higher level of service. The statute must also specify that reimbursement shall be made from the State Mandates Claims Fund. If the cost of these

mandates exceed $500,000 during the first 12-month period following the operative date of the mandate, a request for reimbursement of this mandate must be included in the commission's local government claims bill. If the costs do not exceed $500,000 the controller is authorized to process reimbursement claims.

Additional Information

For additional information on the functions and policies of the commission, please reference Chapter 1459, Statutes of 1984 contained in California Government Code sections 17500-17630; and Title 2, California Administrative Code sections 1181-1189.

Questions can be directed to:

Commission on State Mandates
1025 P Street, Room 177
Sacramento, California 95814
Telephone: (916) 323-3562.

County of Fresno
Test Claim: Chapter 486, Statutes of 1975, and
Chapter 1459, Statutes of 1984

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rates of taxes on the secured roll. The revised amounts constitute the appropriations and reserves for the period. If the governing body fails, for any reason, to correct the matter, the board of supervisors shall fix the rate established pursuant to Revenue and Taxation Code Section 2260 as the tax rate for that agency, which agency shall decrease the appropriations or reserves, or both, so as to come within that tax rate limit. The revised amounts constitute the appropriations and reserves for the period.

SEC. 1.5. Section 43068 of the Government Code is repealed.

SEC. 1.6. Section 88003 of the Government Code is amended to read:

88003. The Legislative Analyst shall prepare an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government. Any estimate of increased cost to local governments shall be set out in boldface print in the ballot pamphlet. The analysis shall be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible. The analysis may contain background information, including the effect of the measure on existing law and the effect of enacted legislation which will become effective if the measure is adopted, and shall generally set forth in an impartial manner the information which the average voter needs to understand the measure adequately. The Legislative Analyst may contract with professional writers, educational specialists or other persons for assistance in writing an analysis that fulfills the requirements of this section, including the requirement that the analysis be written so that it will be easily understood by the average voter. The Legislative Analyst may also request the assistance of any state department, agency, or official in preparing his analysis. The title of the measure which appears on the ballot shall be amended to contain a summary of the Legislative Analyst's estimate of the net state and local government financial impact.

SEC. 1.7. Section 2206.5 is added to the Revenue and Taxation Code, to read:

2206.5. "Costs mandated by initiative enactment" means any increased costs mandated upon a local agency after the effective date of this section by any statute on any amendment to the State Constitution adopted or enacted pursuant to the provisions of Section 22 of Article IV of the State Constitution. "Costs mandated by initiative enactment" does not include costs which are specifically reimbursed or funded by the terms of such initiative enactment.

SEC. 1.8. Section 2207 is added to the Revenue and Taxation Code, to read:

2207. "Costs mandated by the state" means any increased costs which a local agency or a school district 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.

SEC. 2. Section 2209 of the Revenue and Taxation Code is amended to read:

2209. "Executive order" means any order, plan, requirement, rule or regulation issued:

(a) By the Governor, or

(b) By any officer or official serving at the pleasure of the Governor, or

(c) By any agency, department, board or commission of state government; provided that the term "executive order" shall not include any order, plan, requirement, rule or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.

"Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.

SEC. 3. Section 2210 is added to the Revenue and Taxation Code, to read:

2210. "Law enacted after January 1, 1973," means any statute enacted by the Legislature after January 1, 1973.

SEC. 4. Section 2215 of the Revenue and Taxation Code is amended to read:

2215. "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" does not include a city, a county, a school district or a community college district. "Special district" does not include any agency which is not authorized by statute to levy a property tax rate.

SEC. 5. Section 2228 of the Revenue and Taxation Code is amended to read:

2228. (a) The annual percentage change in population for special districts shall be the percentage established for the county pursuant to Section 2227. If a special district is located in more than one county, the annual percentage change for such district shall be the weighted average of the percentage change of each such county. The Department of Finance shall determine the weights to be used in determining such average. If a special district is located entirely within a city, the annual percentage change in population for such district shall be that established for such city pursuant to Section 2227.

(b) In the event that the territory of a special district is located entirely within two or more cities, the annual percentage change in population for such district shall be the weighted average of the percentage change of each of such cities, as such percentage change has been determined pursuant to Section 2227. The Department of Finance shall determine the weights to be used in determining such average.

(c) If the governing body of a special district determines that the county percentage change in population will not be accurate for such district, it may, within 30 days after May 1, request the department to prepare a special population estimate for the district. The department shall comply with such request prior to August 1, and the estimate prepared by the department shall be used to determine population change for purposes of this chapter. The district shall reimburse the department for the actual cost of preparing such estimate.

SEC. 6. Section 2231 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 2231 is added to the Revenue and Taxation Code, to read:

2231. (a) The state shall reimburse each local agency for all "costs mandated by the state", as defined in Section 2207. The state shall reimburse each school district only for those "costs mandated by the state" specified in subdivision (a) of Section 2207.

(b) For the initial fiscal year during which such costs are incurred reimbursement funds shall be provided as follows: (1) any statute mandating such costs shall provide an appropriation therefor, and (2) any executive order mandating such costs shall be accompanied by a bill appropriating the funds therefor, or, alternatively, an appropriation for such funds shall be included in the Budget Bill for the next following fiscal year.

In subsequent fiscal years appropriations for such costs shall be included in the State Budget and in the Budget Bill.

(c) The amount appropriated for such purposes shall be appropriated to the Controller for disbursement.

(d) The Controller shall disburse reimbursement funds to local agencies as follows:

(1) For the initial fiscal year during which such costs will be incurred, each local agency or school district to which the mandate

is applicable shall submit to the Controller, within 45 days of the operative date of the mandate, a claim for reimbursement as well as its estimate of the costs required by such mandate for the current fiscal year. The Controller shall pay such claims from the funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated cost, and (ii) may reduce any claim which he determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit such claims to the Controller by October 31. The Controller shall pay such claims from funds appropriated therefor, provided that he (i) may audit the records of any local agency or school district to verify the actual amount of the mandated cost, (ii) may reduce any claim, which he determines is excessive or unreasonable, and (iii) shall adjust the payment to correct for any underpayments or overpayments which occurred in the previous fiscal year.

SEC. 8. Section 2233 is added to the Revenue and Taxation Code, to read:

2233. In the event that the amount appropriated for reimbursement purposes pursuant to Section 2231 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, he shall immediately report such action to the Department of Finance and to the chairman of the respective committees in each house of the Legislature which consider appropriations.

SEC. 9. Section 2234 is added to the Revenue and Taxation Code, to read:

2234. 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 such costs incurred after the operative date of such mandate and the local agency or school district shall reduce its property tax rate by an equivalent amount.

SEC. 10. Article 3 (commencing with Section 2240) is added to Chapter 3 of Part 4, Division 1 of the Revenue and Taxation Code, to read:

Article 3. Method of Providing Reimbursement Revenue for Costs Mandated by State

2240. Revenues to reimburse local agencies and school districts pursuant to the provisions of Section 2229, 2230, or 2231 shall be determined and appropriated as provided in this article and Section 2231.

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2241. When a bill is introduced in the Legislature, the Legislative Counsel shall determine whether such bill requires state reimbursement to local agencies or school districts pursuant to Section 2229, 2230, or 2231. He shall make this determination known in the digest of the bill.

In making the determination required by this section the Legislative Counsel shall disregard any provision in a bill which would make inoperative the reimbursement requirements of Section 2229, 2230, or 2231, and shall make his determination irrespective of any such provision.

2242. Whenever the Legislative Counsel determines that a bill will require state reimbursement to a local agency or a school district as provided in Section 2229, 2230 or 2231, the Department of Finance shall prepare estimates of the amount of reimbursement which will be required. Such estimates shall be prepared for the respective committees of each house of the Legislature which consider taxation measures and appropriation measures and shall be prepared prior to any hearing on such a bill by any such committee.

2243. The estimate required by Section 2242 shall be the amount estimated to be required during the first fiscal year of a bill's operation in order to reimburse local agencies and school districts, pursuant to Section 2229, 2230 or 2231, for costs mandated by such bill. In the event that the operative date of such a bill does not begin on July 1, the estimate shall also include the amount estimated to be required for reimbursement for the next following full fiscal year.

2244. In the event that a bill is amended on the floor of either house, whether by adoption of the report of a conference committee or otherwise, in such a manner as to require reimbursement pursuant to Section 2229, 2230 or 2231, the Legislative Counsel shall immediately inform, respectively, the Speaker of the Assembly and the President of the Senate of such fact. Such notification from the Legislative Counsel shall be published in the journal of the respective houses of the Legislature.

2245. In every subsequent fiscal year, the State Budget and the Budget Bill shall include appropriations to continue to reimburse local agencies and school districts for costs mandated by the state.

2246. Before the end of each calendar year the Department of Finance shall review all statutes enacted during such calendar year which (i) contain provisions making inoperative Section 2229, 2230, or 2231, or (ii) have resulted in costs or revenue losses mandated by the state which were not identified when the statute was enacted. Such review shall identify the costs involved in complying with the provisions of such statutes. The Department of Finance shall submit to the Legislature an annual report of the review required by this section, together with such recommendations as it may deem appropriate.

SEC. 11. Article 3.5 (commencing with Section 2250) is added to Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code, to read:

Article 3.5 Claims Against the State for Additional Reimbursement

2250. The State Board of Control, pursuant to the provisions of this article, shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for all costs mandated by the state as required by Section 2229, 2230 or 2231 and by Article 3 (commencing with Section 2240).

2251. For the purpose of hearing and deciding upon such claims the membership of the Board of Control shall consist of those members provided by Part 4 (commencing with Section 13900) of Division 3 of Title 2 of the Government Code and two additional members, representing local agencies. Such additional members shall be appointed by the Governor and shall serve for a term of two years. Terms of members appointed pursuant to this section shall begin on January 1. A member appointed pursuant to this section shall continue to serve until his successor has been appointed and qualified.

2252. The Board of Control shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on such claims. The hearing procedure shall provide for presentation of evidence by the claimant and by the Department of Finance and any other affected department or agency. A vote of a majority of the board members shall be required to sustain a claim submitted pursuant to this article.

2253. Claims submitted pursuant to this article shall be limited to the following:

(a) A claim alleging that the Controller has incorrectly reduced payments to a local agency pursuant to the provisions of paragraph (2) of subdivision (d) of Section 2231;

(b) A claim alleging that an executive order has incorrectly specified that it does not involve any cost mandated by the state; or

(c) A claim which has not been paid because it was submitted to the Controller after the deadline specified in subdivision (d) of Section 2231; provided that any claim submitted pursuant to this subdivision shall not exceed 80 percent of the amount which could have been claimed pursuant to subdivision (d) of Section 2231.

2254. In deciding upon any claim the Board of Control, after reviewing the evidence presented to it, may increase or reduce the amount requested by the claimant, or may disallow the claim.

2255. No later than January 31 of each calendar year the Board of Control shall report to the Legislature on the number of claims it has allowed pursuant to the provisions of this article. Immediately on receipt of such report a local government claims bill shall be introduced in each house of the Legislature by the chairman of the committee that considers appropriations. The local government claims bill, at the time of its introduction, shall provide for an

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appropriation sufficient to pay all claims awarded pursuant to the provisions of this article, by the Board of Control during the preceding calendar year.

SEC. 11.5. Section 2260 of the Revenue and Taxation Code is amended to read:

2260. The maximum property tax rates for local agencies shall be those established pursuant to the provisions of this article or of Article 6, 7 or 8 of this chapter (commencing with Section 2201) and shall exclude the following from the determination thereof: (1) any property tax rate levied to pay the cost of interest and redemption charges on bonded or other indebtedness which was authorized prior to the effective date of this section, together with any reserve or sinking funds required in connection therewith; (2) any property tax rate levied to pay the cost of interest and redemption charges on bonded or other indebtedness which was authorized after the effective date of this section by the voters of such agency, together with any reserve or sinking funds required in connection therewith; (3) any property tax rate levied to pay the cost of interest charges on notes of a local agency issued in anticipation of bonds, if such bonds were authorized prior to the effective date of this section or were authorized by the voters of such agency after the effective date of this section, and if the principal amount of any such notes is payable only from proceeds of the sale of such bonds; (4) any property tax rate levied to pay the cost of interest and redemption charges on refunding bonds or on bonds issued pursuant to Section 53541 of the Government Code or Section 71960 of the Water Code, together with any reserve or sinking funds required in connection therewith; (5) any property tax rate levied to pay the cost of retirement and pension benefits or plans which are being provided pursuant to provisions of a city or county charter or which have been specifically approved by the voters of a local agency; (6) any property tax rate levied to pay the cost of payments or contributions which are required to be made to a special fund by specific provision of a city or county charter; (7) any property tax rate levied pursuant to a city charter procedure ordinance for the purpose of paying principal and interest on assessment bonds or for the purpose of paying annual costs of maintenance and operation of improvements financed pursuant to city charter procedure, when the levy is made in relation to benefits derived and not in accordance with the last equalized city or county assessment roll; and (8) any property tax rate levied on behalf of a county superintendent of schools.

SEC. 12. Section 2261.1 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 2261.1 is added to the Revenue and Taxation Code, to read:

2261.1. (a) Any county which was providing structural fire protection services in unincorporated areas of the county during the 1971–1972 or the 1972–1973 fiscal years and which did not levy a property tax for such services as provided in Section 25643 of the

County of Fresno
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are enacted and become effective on or before January 1, 1985, (2) each bill amends Section 17024.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2380, in which case Section 1 of this bill shall not become operative.

SEC. 12. Section 8.1 of this bill incorporates amendments to Section 17063 of the Revenue and Taxation Code proposed by both this bill and SB 1278. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1985, (2) each bill amends Section 17063 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1278, in which case Section 3 of this bill shall not become operative.

SEC. 13. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall be applied in the computation of taxes for taxable years commencing on and after January 1, 1984.

STATE—MANDATED LOCAL COSTS—COMMISSION ON STATE MANDATES—REIMBURSEMENT PROCEDURES

Senate Bill No. 2337

CHAPTER 1459

An act to add Part 7 (commencing with Section 17500) to Division 4 of Title 2 of the Government Code, and to add Section 2229 to the Revenue and Taxation Code, relating to costs mandated by the state, and making an appropriation therefor.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2337, Foran. State-mandated local costs.

Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies for any increased costs which they are required to incur as the result of any statute enacted, or executive order issued, after January 1, 1973, which mandates a new program or an increased level of service of an existing program, as specified. A similar requirement is imposed on the state with respect to school districts regarding any statute enacted after January 1, 1973, or executive order issued after January 1, 1978. Section 6 of Article XIII B of the California Constitution supplements these statutory provisions, and imposes a constitutional requirement of reimbursement for certain costs mandated by the state after July 1, 1980.

Under existing statutory law, if a local agency or school district believes that it has not been fully reimbursed for costs imposed by a statute or executive order, a procedure for making and determining a claim for reimbursement is provided. The State Board of Control makes the initial determination regarding a claim and provision is made for judicial review of the board's determination. If it is finally determined that a claim should be allowed, in whole or in part, the board is required to so report to the Legislature, which, in turn, is directed to introduce legislation to provide for an appropriation sufficient to pay the claims allowed.

This bill would create the Commission on State Mandates, which would replace the State Board of Control with respect to the initial determination regarding a claim for reimbursement. The commission would be composed of the Controller, Treasurer, Director of Finance, the Director of the Office of Planning and Research, and a public member appointed by the Governor to a specified term, subject to Senate confirmation.

This bill would revise the definition of "costs mandated by the state" with regard to costs incurred 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.

This bill would provide a specific procedure for state reimbursement of costs mandated by the state with regard to any bill introduced or amended on and after January 1, 1985, which the Legislative Counsel has determined will mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution. With regard to each of those bills, the reimbursement would be made directly from the State Mandates Claims Fund, a continuously appropriated fund which would be created, rather than going through the local government claims bill process, to the extent that the statewide cost of a particular claim does not exceed $500,000.

The bill would also provide that all claims for reimbursement which have not been included in a local governmental claims bill enacted prior to January 1, 1985, would be transferred to and considered by the commission as claims filed on and after January 1, 1985, with the commission.

The bill would appropriate $200,000 for administration of the program from January 1, 1985, to June 30, 1985, inclusive, and $10,000,000 to the State Mandates Claims Fund.

Appropriation: yes.

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

SECTION 1. Part 7 (commencing with Section 17500) is added to Division 4 of Title 2 of the Government Code, to read:

PART 7. STATE-MANDATED LOCAL COSTS

CHAPTER 1. LEGISLATIVE INTENT

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 programs.

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. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution.

CHAPTER 2. GENERAL PROVISIONS

17510. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this part. The definition of a word applies to any variants thereof and the singular tense of a word includes the plural.

17511. "City" means any city whether general law or charter, except a city and county.

17512. "Commission" means the Commission on State Mandates.

17513. "Costs mandated by the federal government" means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that 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. "Costs mandated by the federal government" does not include

costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

17514. "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.

17514.5. "Cost savings authorized by the state" means any decreased costs which a local agency or school district realizes as a result of any statute enacted or any executive order adopted which permits or requires the discontinuance of or a reduction in the level of service of an existing program which was mandated before January 1, 1975.

17515. "County" means any chartered or general law county. "County" includes a city and county.

17516. "Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.

(b) Any officer or official serving at the pleasure of the Governor.

(c) Any agency, department, board, or commission of state government.

"Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. "Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.

17517. "Fund" means the State Mandates Claims Fund.

17518. "Local agency" means any city, county, special district, authority, or other political subdivision of the state.

17519. "School district" means any school district, community college district, or county superintendent of schools.

17520. "Special district" means any agency of the state which performs governmental or proprietary functions within limited boundaries. "Special district" includes a redevelopment agency, a joint powers agency or entity, a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. "Special district" does not include a city, a county, a school district, or a community college district.

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County free libraries established pursuant to Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code, areas receiving county fire protection services pursuant to Section 25643 of the Government Code, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered "special districts" for all purposes of this part.

17521. "Test claim" means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.

CHAPTER 3. - COMMISSION ON STATE MANDATES

17525. There is hereby created the Commission on State Mandates, which shall consist of five members as follows:

(1) The Controller.

(2) The Treasurer.

(3) The Director of Finance.

(4) The Director of the Office of Planning and Research.

(5) A public member with experience in public finance, appointed by the Governor and approved by the Senate.

The pubic member shall serve for a term of four years subject to renewal.

17526. All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

17527. In carrying out its duties and responsibilities, the commission shall have the following powers:

(a) To examine any document, report, or data, including computer programs and data files, held by any local agency or school district.

(b) To meet at times and places as it may deem proper.

(c) As a body or, on the authorization of the commission, as a committee composed of one or more members, to hold hearings at any time and place it may deem proper.

(d) Upon a majority vote of the commission, to issue subpoenas to compel the attendance of witnesses and the production of books, records, papers, accounts, reports, and documents.

(e) To administer oaths.

(f) To contract with other agencies or individuals, public or private, as it deems necessary, to provide or prepare services, facilities, studies, and reports to the commission as will assist it in carrying out its duties and responsibilities.

(g) To adopt, promulgate, amend, and rescind rules and regulations which shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(h) To do any and all other actions necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it.

17528. The members of the commission shall elect a chairperson and a vice chairperson of the commission.

17529. The commission may appoint as attorney to the commission an attorney at law of this state, who shall hold office at the pleasure of the commission. The attorney shall represent and appear for the commission in all actions and proceedings involving any question under this part or under any order or act of the commission.

The attorney shall advise the commission and each member of the commission, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof. The attorney shall generally perform all duties and services as attorney to the commission which the commission may require.

17530. The commission shall appoint an executive director, who shall be exempt from civil service and shall hold office at the pleasure of the commission. The executive director shall be responsible for the executive and administrative duties of the commission and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the jurisdiction of the commission. The executive director shall keep a full and true record of all proceedings of the commission, issue all necessary process, writs, warrants, and notices, and perform other duties as the commission prescribes.

17531. The executive director may employ those officers, examiners, experts, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of this part or to perform the duties and exercise the powers conferred upon the commission by law.

17532. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or commissioners designated for the purpose by the commission. The evidence in any investigation, inquiry, or hearing may be taken by the commissioner or commissioners to whom the investigation, inquiry, or hearing has been assigned or, in his or her or their behalf, by an examiner designated for that purpose. Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, opinion, and order of the commission.

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CHAPTER 4. IDENTIFICATION AND PAYMENT OF COSTS MANDATED BY THE STATE

Article 1. Commission Procedure

17550. Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter.

17551. (a) The commission, pursuant to the provisions of this chapter, shall 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.

(b) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on and after January 1, 1985, that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975.

17552. 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 or for costs [illegible]ated by the state, as defined in Section 2207 or 2207.5 of the [illegible]ue and Taxation Code, pursuant to a statute enacted, or an e[illegible]utive order implementing a statute enacted, before January 1, 1975.

17553. The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The hearing procedure shall provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person. Hearing of a claim may be postponed at the request of the claimant, without prejudice.

17555. The commission, within 10 days after receipt of a test claim based upon a statute or executive order, shall set a date for a public hearing on the claim 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.

17556. (a) 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:

(1) 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.

(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.

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

(7) 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.

(b) The commission may find costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, solely with regard to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975. However, such a finding shall not constitute costs mandated by the state as defined in Section 17514.

17557. If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvened 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. A local agency, school district, and the state may file a claim on 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.

E-4

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17558. The commission shall submit the adopted parameters and guidelines to the Controller. All claims relating to a statute or executive order which are filed after the determination of the test claim pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose.

17559. A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing.

Article 2. Specific Costs Mandated by the State

17575. When a bill is introduced in the Legislature, and each time a bill is amended, on and after January 1, 1985, the Legislative Counsel shall determine whether the bill mandates a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution. The Legislative Counsel shall make this determination known in the digest of the bill and shall describe in the digest the basis for this determination. The determination by the Legislative Counsel shall not be binding on the commission in making its determination pursuant to Section 17555.

17576. Whenever the Legislative Counsel determines that a bill will mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution, the Department of Finance shall prepare an estimate of the amount of reimbursement which will be required. This estimate shall be prepared for the respective committees of each house of the Legislature which consider taxation measures and appropriation measures and shall be prepared prior to any hearing on the bill by any such committee.

17577. The estimate required by Section 17576 shall be the amount estimated to be required during the first fiscal year of a bill's operation in order to reimburse local agencies and school districts for costs mandated by the state by the bill.

17578. In the event that a bill is amended on the floor of either house, whether by adoption of the report of a conference committee or otherwise, in such a manner as to mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution, the Legislative Counsel shall immediately inform, respectively, the Speaker of the Assembly and the President of the Senate of that fact. Notification from the Legislative Counsel shall be published in the journal of the respective houses of the Legislature.

17579. (a) Any bill introduced or amended on and after January 1, 1985, for which the Legislative Counsel has determined the bill will mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution, shall contain a section specifying that reimbursement shall be made from the fund pursuant to Section 17610 when the amount of the claim has been determined pursuant to Article 1 (commencing with Section 17550) of this chapter or that there is no mandate or that the mandate is being disclaimed and the reason therefor.

(b) Any bill introduced or amended on and after January 1, 1985, may, but is not required to, contain an appropriation to provide reimbursement of costs mandated by the state. Any appropriation shall be made to the fund.

Article 3. Reports to the Legislature

17600. At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement.

17601. The commission shall report to the Legislature on January 15, 1986, and each January 15 thereafter, on the number of claims it denied during the preceding calendar year and the basis on which the particular claims were denied.

Article 4. Payment of Claims

17610. The costs arising from a statute containing a statement that the statute mandates a new program or higher level of service and specifying that reimbursement shall be made from the fund shall, upon certification of the parameters and guidelines by the commission to the Controller, be paid from the fund, provided that the statewide cost of the claim does not exceed five hundred thousand dollars ($500,000).

17611. The costs of a claim submitted pursuant to Article 1 (commencing with Section 17550) shall be paid only as provided in this article, except Section 17610.

17612. (a) Immediately upon receipt of the report submitted by the commission pursuant to Section 17600, a local government claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of these mandates.

(b) If the Legislature deletes from a local government claims bill funding for a mandate, the local agency or school district 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.

17614. There is hereby created the State Mandates Claims Fund. Notwithstanding Section 13340, money in the fund is continuously appropriated without regard to fiscal years for the sole purpose of paying claims pursuant to Section 17610. Notwithstanding the

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foregoing provisions of this section, money placed in the fund pursuant to subdivision (b) of Section 17579 shall not be subject to the statewide cost limitation prescribed in Section 17610.

CHAPTER 5. CLAIMS FOR OFFSETTING LOCAL SAVINGS AGAINST STATE REIMBURSEMENTS

17620. The commission shall hear and decide upon a claim by any state agency that a local agency or school district has realized a cost savings authorized by the state.

Notwithstanding any other provisions of law, this chapter shall provide the sole and exclusive procedure by which the commission shall hear and decide upon a claim that a local agency or school district has realized a cost savings authorized by the state.

No claim shall be made to the commission pursuant to this chapter unless the cost savings identified by the claim exceeds two thousand five hundred dollars ($2,500), on a statewide basis, per fiscal year.

Any state agency with the authority to audit the records of any local agency or school district may do so for the purpose of establishing that there were cost savings authorized by the state in excess of two thousand five hundred dollars ($2,500) for which a claim may be filed with the commission.

17621. The commission shall adopt procedures for receiving claims pursuant to this chapter and for providing a hearing on those claims. The hearing procedure shall provide for presentation of evidence by any state agency, by the affected local agency or school district, and by any other interested parties.

17622. The commission, within 10 days after receipt of the first claim based upon a statute or executive order, shall set a date for public hearing on the claim within a reasonable time. The claim shall be submitted in a form prescribed by the commission. After a hearing in which any state agency, the affected local agency or school district, and any other interested parties may participate, the commission, if it determines there is a cost savings authorized by the state, shall adopt parameters and guidelines for identifying all cost savings realized by local agencies or school districts relating to the statute or executive order. These parameters and guidelines shall provide for an offset between the cost savings authorized by the state and the reasonable costs of preparing the reports required by Section 17624. A local agency, school district, and the state may file a claim or request with the commission to amend, modify, or supplement parameters and guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines.

17623. At least twice each calendar year, the commission shall submit to the Legislature a report on claims it has approved pursuant to this chapter. This report may be included in the report required by Section 17600. A section requiring the Controller to deduct 50 percent of the cost savings realized by each local agency or school district from the reimbursements for costs mandated by the state made pursuant to Chapter 4 (commencing with Section 17550) shall, at the time of its introduction, be included in the local government claims bill required by Section 17613.

17624. The commission may recommend an allocation formula based on actual savings.

17625. (a) Each local agency or school district which submits a claim pursuant to Chapter 4 (commencing with Section 17550) shall submit a report on the amount of cost savings authorized by the state which it realized in the preceding fiscal year.

(b) Subsequent to the enactment of a local government claims bill requiring the Controller to deduct cost savings realized by local agencies or school districts pursuant to a statute or executive order, the Controller shall distribute the claiming instructions for reporting cost savings to all applicable local agencies and school districts.

(c) The Controller shall reduce the payments to each local agency or school district for costs mandated by the state by 50 percent of the amount of cost savings authorized by the state realized by the local agency or school district in the preceding fiscal year. The first fiscal year for which the Controller shall reduce these payments shall be the fiscal year during which the local government claims bill requiring the deduction is enacted. The Controller shall not reduce any payment unless the cost savings authorized by the state and realized by a local agency or school district exceeds two hundred dollars ($200).

(d) No claim for mandated costs shall be paid by the Controller unless the local agency or school district which submitted the claim has also submitted all savings reports required by this section or a certification that the local agency or school district did not realize any savings which exceeds two hundred dollars ($200).

17626. A school district, local agency, or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing.

CHAPTER 6. OPERATIVE DATE

17630. The provisions of this part shall be applicable to claims for state reimbursement of costs mandated by the state on and after January 1, 1985. All claims for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2225), Article 3 (commencing with Section 2240), Article 3.5 (commencing with Section 2250), and Article 3.6 (commencing with Section 2256) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code which have not been included in a local government claims bill pursuant to Section 2235 of the Revenue and Taxation Code enacted before January 1, 1985, shall be

State of California

Memorandum

LATE FILING
ITEM #2

Date : FEB 24 1986

To : Stephen R. Lehman
Program Analyst
Commission on State Mandates

From : Department of Finance

Subject: Claim No. CSM-4204 from Fresno County regarding the Mandate Reimbursement Process (Chapters 486/75 and 1459/84)

The purpose of this memorandum is to briefly note for the record our concerns with and/or objections to some of the points raised in the claimant's February 14th letter to you on this subject. We will be available to elaborate on these points at the Commission's March 27, 1986 hearing on the issue.

(1) We disagree with the contention that Chapter 1406/72 is not relevant in this regard. (p.A-1) That legislation is significant because it established the initial claiming procedure, and pre-dates the operative date of "local mandate" law, i.e., January 1, 1973.

(2) The SCO Opinion regarding Penal Code Section 4700 claiming procedures is irrelevant because it deals with a completely different program and process. (p.A-2)

(3) The characterization of "... Chapter 1406's mandate language ... (as)... limited in nature and intended to compensate local agencies for revenue losses resulting from other changes contained in that legislation" is not accurate. Reimbursement of revenue losses was a relatively minor feature of Chapter 1406 and is <u>not</u> included in the Constitution. (p.A.1)

(4) We know of no authority or support for the supposition on p. A-3 that "... since Article XIIIB was enacted by the voters, not the legislature, it cannot be stated that reimbursement of claiming costs was unintended. From the electorate's standpoint, payment of claiming costs could have been assumed to be part of the process".

(5) Even if it is true, as claimant alleges on p. A-4, that "... the reimbursement process (for mandates) is mandatory upon the State...", it does not follow that it is similarly mandatory on the claimant and other units of local government.

(6) In the last paragraph on p. A-5, claimant correctly quotes Government Code Section 17552 as "... the sole and exclusive procedure by which a local agency or school district <u>may</u> claim reimbursement for costs mandated by the State ..." (emphasis added) but then ignores the permissive nature of this language (i.e., "<u>may</u> seek") in the balance of its arguments.

(7) On p. A-6, claimant asserts that the notion that "... a new program or higher level of service relates to the product being conferred on the ultimate recipient ... (is) a common mandate misconception ... In actuality, reimbursement is based on the action required by the provider (i.e., the local agency) regardless of whether any qualitative benefits result". Again, we are unaware of any authority which would validate this conclusion as an "actuality".

Again, we will be available to elaborate on these points at the Commission's March 27 hearing. If you have any questions in the meantime, please contact James Apps of my staff at (916) 324-0043.

Judy A. Agan
Assistant Program Budget Manager

cc: Phillip T. Bird, State Controller's Office
Glen Beatie, State Controller's Office
Lyle Defenbaugh, Legislative Analyst's Office
Carol Hunter, Attorney General's Office

LR:323

LATE FILING

ITEM #2

KENNETH CORY

Controller of the State of California

SACRAMENTO, CA 95805

(916)445-7089

February 25, 1986

RECEIVED

FEB 26 1986

COMMISSION ON STATE MANDATES

Mr. Stephen R. Lehman
Program Analyst
Commission on State Mandates
1025 P Street, Room 177
Sacramento, CA 95814

Dear Mr. Lehman:

Re: Response of State Controller to Comments By County of Fresno on CSM-4204 dated February 14, 1986

The February 14, 1986, response of Fresno County cites in support of its position an opinion issued by this office dated January 7, 1986, concluding that costs incurred for the preparation of reimbursement claims under Penal Code §§ 4700, 4700.2, 4700.5 and 6005 by private consultants are reimbursable. That opinion, however, is irrelevant in this proceeding, as it addressed a completely different program and factual setting. In addition, Fresno County mischaracterizes the conclusion therein.

For forty years it had been the practice of the Department of Corrections to reimburse under Penal Code § 4700 for the costs of claim preparation. However, the statutory authority for such reimbursement was unclear. By the time the administrative responsibility for making reimbursements was shifted to this office in 1982, we believed we were legally required to follow the long-standing administrative interpretation of the Department of Corrections.

In the case of mandated costs, there is no past interpretation by this or any agency which allows reimbursement for claim preparation, and the long-standing practice has been to the contrary. Thus, the sole reason for allowing such reimbursement under the Penal Code provisions is inapplicable here and, in fact, militates against reimbursement in this case.

In choosing to ignore the rationale of the opinion, Fresno County mischaracterizes its conclusion. Nowhere in the opinion is it "declared that claiming costs should be treated as 'direct costs'" (Response of Fresno County, 2/14/86, p. A-2) (emphasis added). It is merely stated that claim preparation has historically been treated as a direct cost in that program.

Clearly, the January 7 opinion has no relevance to the issue presently before the Commission of State Mandates and the County's reliance upon it is misplaced.

Very truly yours,

KENNETH CORY, STATE CONTROLLER

BY

Peter A. Baldridge
Attorney

PAB:df

cc: Glen Beatie
: Lyle Defenbaugh
: Carol Hunter

MINUTES

COMMISSION ON STATE MANDATES
March 27, 1986
State Capitol, Room 2040
Sacramento, California

Present were: Chairperson Jesse R. Huff, Director, Department of Finance; Thomas A. Aceituno, Representative for the State Treasurer; Peter Pelkofer, Deputy State Controller; Robert C. Creighton, Public Member.

There being a quorum present, Chairperson Huff called the meeting to order at 10:02 a.m.

Item 1 Minutes

The Commission on State Mandates delayed discussion of the minutes of the February 27, 1986 hearing until after discussion and action on Item 9, the proposed Statement of Decision on sediment removal. Staff stated that the disposition of Item 9 could have an impact on the February 27, 1986 minutes.

Member Carlyle arrived at 10:06 a.m.

Item 2 Test Claim
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Present at the hearing were Paul Robinson and Vincent McGraw, representing the County of Fresno, and Carol Miller, representing the Education Mandated Cost Network.

Mr. Robinson started the discussion by stating that there is no question as to whether local governments have incurred costs as a result of Chapter 486/78 and Chapter 1459/84, but rather, the question that needs to be answered is whether those costs were required to be incurred. Mr. Robinson noted that the Revenue and Taxation Code (RTC) established procedures prior to the voters enacting Article XIII B of the California Constitution. Therefore, the RTC cannot be considered a result of a voter enacted initiative. In addition, Mr. Robinson noted that the Legislature later enacted new procedures with Chapter 1459/84.

Member Creighton noted that the claimant stated in it's claim that there were other methods of providing reimbursement that would have been more cost effective and that the voters intended that claiming costs would be reimbursable.

Mr. Robinson stated that whether one method is more cost effective than the next is not the issue. The issue is whether the claimant was mandated to incur the cost. Mr. Robinson also stated that the Legislative Analyst's Office analysis of Article XIII B indicates that voters had intended that claiming costs be reimbursed.

Member Carlyle acknowledged that there were procedures for obtaining reimbursement prior to January 1, 1975. However, Government Code Section 17500 states that the procedures in the Government Code are not a new program but rather a consolidation of the RTC and Article XIII B.

Mr. Robinson stated that new procedures were established with amendments to the RTC, to the Government Code, and with each new mandated program. In all cases, Mr. Robinson noted, the claimant is compelled to comply with the procedures and process.

Member Pelkofer then inquired and commented on what actually compels the claimant to file claims for reimbursement. Member Pelkofer stated that the compelling factor appeared to be the county's desire to obtain public funds from the State.

Member Creighton noted that the commission has requested that the Legislature address whether test claim costs are reimbursable.

Carol Miller stated that the Education Mandated Cost Network supports the claim submitted by the County of Fresno. In addition, Ms. Miller stated that a compelling factor for local governments is fiscal responsibility, as the fiscal officer of a local entity must address how that entity will pay for a mandated program.

Member Pelkofer then moved to find that Chapter 486/75 and Chapter 1459/84 imposed state mandated costs.

Carol Hunter, Commission Counsel, noted that there were two processes identified in the test claim.

Member Pelkofer moved to find mandates in both the test claim process and the Controller's claiming process.

Member Carlyle suggested that they be separated into two motions for clarity. Member Pelkofer amended his motion into two separate motions.

The vote on the motion to find that the State Controller's claiming process is a mandate was: Member Aceituno, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

The vote on the motion to find that the test claim process is a mandate was: Member Aceituno, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

Item 3 Test Claim
Chapter 566, Statutes of 1974
<u>Patient Aftercare Plans</u>

This claim was continued prior to the hearing because of additional information that could change the staff recommendation.

Item 4 Test Claim
Chapter 743/Statutes of 1978
Judicial Arbitration in Municipal and Justice Courts

Staff indicated that evidence for this test claim is before the commission and is logged as Items E1 - E4.

Member Creighton moved approval of a mandate. The vote on the motion was unanimous. Motion carried.

The claimant's representative, A. B. Brand, requested that the commission allow the combination of the parameters and guidelines for this approved mandate with the parameters and guidelines for the previously approved mandate for Chapter 1006/75 and Chapter 743/78. The commision agreed with the request.

Item 5 Test Claim
Chapter 1567, Statutes of 1984
Minimum Tire Tread

Richard Knott, representative for the claimant, San Diego Unified School District and Carol Miller of School Services of California, Inc, appeared on behalf of the claimant.

There was discussion about possible cost cutting means of complying with the statute such as rotating tires worn below 2/32 of an inch of tread to the rear axle of the bus. The claimant stated that the rotation suggestion had been made by the California Highway Patrol and that it would be analyzed during adoption of parameters and guidelines if a mandate is found for this matter.

Member Aceituno moved to find a mandate. The vote on the motion was unanimous. The motion carried.

Item 6 Parameters and Guidelines
Chapter 498, Statutes of 1983
Certification of Teacher Evaluator's
Demonstrated Competence

The following people appeared to address the commission regarding this claim: William A. Doyle, Director, Classified Personnel, San Jose Unified School District, Carol Miller, School Services of California, Inc., Jim Apps, Department of Finance, and Sally Mentor, Department of Education.

Jim Apps told the commission that the Department of Finance submitted a late filing to the commission office on March 26, 1986. This late filing was regarding the proposed parameters and guidelines for certification of teacher evaluators demonstrated competence and contained factual statements and recommendations for substantive changes to the proposed parameters and guidelines.

William Doyle objected to the consideration of the document because it had been submitted the day before the hearing on the matter. He asked the commission to hear the item and to disregard the DOF submittal.

After discussion and a direction to staff to investigate processes which would encourage claimants and agencies to meet deadlines, the commission continued the parameters and guidelines to a later hearing.

Item 7 Parameters and Guidelines
Chapter 48, Statutes of 1980
Marriage Mediator Programs

Member Pelkofer moved adoption of staff's proposed parameters and guidelines. The vote on the motion was unanimous. Motion carried.

Item 8 Statewide Cost Estimate
Chapter 1603, Statutes of 1982 and
Chapter 1166, Statutes of 1983
Democratic Presidential Delegates

Member Pelkofer explained that a deficiency appropriation could be requested from the Legislature if the statewide cost estimate was not sufficient.

Member Pelkofer made a motion that the statewide cost estimate, as recommended by commission staff, be adopted. The vote on the motion was unanimous. The motion carried.

Fiscal Year	Amount
1983-84	$ 808,763
1984-85	6,504
1985-86	73,051
1986-87	75,608
Total	$ 950,000 (Rounded)

Item 9 Proposed Statement of Decision
SWRCB Order WQ85-10
Sediment Removal

This proposed Statement of Decision was continued by the commission so that staff could amend it to better reflect the action taken by the commission.

Member Pelkofer stated that the commission found that it had the authority to hear the claim, however, the exception to the term "executive order" found in Government Code Section 17516 applied, and therefore, precluded the commission from considering order WQ85-10 as a state mandated program.

Without objection the statement of decision was continued.

Item 10 State Mandates Apportionment System
Programs Proposed for Inclusion

The commission then considered for inclusion into the State Mandates Apportionment System seventeen state-mandated programs. Carol Miller, representing School Services of California, Inc., requested that three programs not be added to the system because the base year costs of those programs may not be representative of on-going costs. Those three programs were 1) Chapter 1176/77-Immunization Records; 2) Chapter 965/77-Suspension of Pupils; and 3) Chapter 1347/80-Scoliosis Screenings.

Mr. A.B. Brand, representing San Bernardino County, requested that the state-mandated program Chapter 952/76-Marijuana Records be excluded from the system.

Member Aceituno moved that the remaining thirteen programs be placed into the State Mandate Apportionment System. The vote on the motion was unanimous. The motion carried.

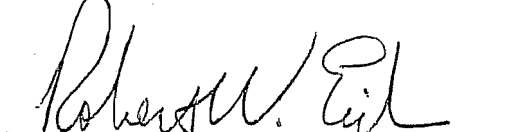
The thirteen programs placed into the State Mandates Apportionment System were as follows:

1. Ch 1242/77--Senior Citizens' Property Tax Deferral
2. Ch 453/76--Sudden Infant Death Syndrome
3. Ch 1355/76--Justice Court Judges
4. Ch 158/78--Court Interpreters
5. Ch 1032/80--Deaf Teletype Equipment
6. Ch 462/78--Dental Records
7. Ch 238/74--Substandard Housing
8. Ch 941/75--Health Care Service Plan
9. Ch 694/75--Attorney Fees
10. Ch 498/77--Coroners
11. Ch 1253/80--MR Representation
12. Ch 1304/80--Limited Conservatorships
13. Ch 1253/75--Disciplinary Procedures

Item 1 Minutes

The Commission on State Mandates again brought up the minutes which had been put-off pending action on Item 9. Without objection the minutes were adopted.

With no further items on the agenda, Chairperson Huff adjourned the hearing at 11:44 a.m.



ROBERT W. EICH
Executive Director

RWE:cc:1018A

AGENDA
COMMISSION ON STATE MANDATES

Public Hearing
April 24, 1986
10:00 a.m.
914 Capitol Mall, Room 540
Library and Courts Building
Sacramento, California

A. ROLL CALL

B. MINUTES

Item 1 Hearing of March 27, 1986

C. TEST CLAIMS

Item 2 Chapter 405, Statutes of 1984;
Pacific Islander Survey

Item 3 Chapter 1018, Statutes of 1979
Superior Court Judgeship

Item 4 Chapter 1153, Statutes of 1983
Regional Notification Centers

Item 5 RWQCB Order 81-89 and Resolution 82-10
Individual Sewage Disposal

D. INCORRECT REDUCTION CLAIM

Item 6 Chapter 1061, Statutes of 1973
Short-Doyle Program

E. PARAMETERS AND GUIDELINES

Item 7 Chapter 498, Statutes of 1983
(Education Code Section 35160.5)
Certification of Teacher Evaluators
Demonstrated Competence

F. STATEMENTS OF DECISION

Item 8 Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Item 9 Chapter 743, Statutes of 1978
Judicial Arbitration in Municipal and Justice Courts

Item 10 Chapter 1567, Statutes of 1984
Minimum Tire Wear

Item 11 SWRCB Order WQ85-10
Sediment Removal

G. EXECUTIVE SESSION

- Personnel
- Litigation

Note: All back-up material and supporting documentation for this meeting is available for public inspection at the office of the Commission on State Mandates, 1025 P Street, Room 177, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP 1032A

Hearing Date: 4/24/86
File Number: CSM-4197
Staff: Stephen Lehman

WP 1030A

Proposed Statement of Decision
Mandate Finding
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

The Commission on State Mandates at its hearing of March 27, 1986 determined that Chapter 486/75 and Chapter 1459/84 imposed costs mandated by the state upon local governments.

Member Pelkofer moved to find that the State Controller's Office reimbursement claim process is a state mandated program. The vote on the motion was: Member Aceituno, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

Member Pelkofer then made a second motion to find that the commission's test claim process is a state mandated program. The vote on the motion was: Member Aceituno, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

BEFORE THE
COMMISSION ON STATE MANDATES

CLAIM OF: County of Fresno Claimant	No. CSM-4204

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on March 27, 1986, in Sacramento, California, during a regularly scheduled meeting of the commission. Paul Robinson, and Vincent McGraw appeared on behalf of the County of Fresno. Carol Miller appeared on behalf of the Education Mandated Cost Network. There were no other appearances.

Evidence, both oral and documentary, having been introduced, the matter submitted, and vote taken, the commission finds:

I.

FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on November 27, 1985, by the County of Fresno.

2. The subject of the claim is Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984.

3. Chapter 486, Statutes of 1975 established the Board of Control's authority to hear and make determinations on claims submitted by local governments that alleges costs mandated by the state. In addition, Chapter 486/75 contained provisions authorizing the State Controller's Office to receive, review and pay reimbursement claims for mandated costs submitted by local governments.

4. Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandated cost claims from local governments.

5. The County of Fresno has incurred increased costs as a result of having to file test claims and reimbursement claims which are required by Chapter 486/75 and Chapter 1459/84.

6. The County of Fresno's increased costs are costs mandated by the state.

7. Government Code Section 17514 defines costs mandated by the state as 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, 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.

II.

DETERMINATION OF ISSUES

1. The commission has authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 impose a reimbursable state mandate upon local government. The County of Fresno has established that these two statutes have imposed a new program and an increased level of service by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the cost of the mandated program.

3. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

ORIGINAL

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

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Agenda Item 8:)
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PUBLIC HEARING

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Library and Courts Building
Room 540
914 Capitol Mall
Sacramento, California

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Thursday, April 24, 1986

10:00 A.M.

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Reported by: RANDALL JOSEPH RANKIN, CSR #4552

1 A P P E A R A N C E S

2

3 Commission Members: JESSE HUFF, Chairman
PETER PELKOFER, Member
4 HUSTON CARLYLE, JR., Member
THOMAS ACETUNO, Member
5 ROBERT CREIGHTON, Member

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Staff: ROBERT EICH, Executive Director
7 CAROL HUNTER, Staff Counsel
STEPHEN LEHMAN, Staff
8 ROSE MARY SWART, Staff

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1 AGENDA ITEM 8

2 CHAIRMAN HUFF: Item 8.

3 MR. LEHMAN: Item 8 is a proposed statement of
4 decision of mandate finding involving Section 486, Statutes
5 of 1985, Chapter 1459, Statutes of 1984 dealing with mandate
6 reimbursement process.

7 The Commission, in it's hearing of March 27,
8 determined that these two statutes constituted mandates by
9 the State upon local governments.

10 Staff is prepared to propose the statement of
11 decision shown on page 358 and 359 for your adoption.

12 MEMBER CREIGHTON: I'll move adoption.

13 MEMBER PELKOFER: Question, please.

14 CHAIRMAN HUFF: Yes?

15 MEMBER PELKOFER: Under "determination of the
16 issues," Item 3, it seems to me -- I see this in one form or
17 another in any number of our standard findings.

18 It seems to me, first of all, that it's boiler plate,
19 which is all right, I guess, if it's appropriate; but it
20 doesn't -- I mean, it's some kind of disclaimer that we're
21 tacking on the end here. I don't quite understand why
22 that's necessary.

23 I would hope that these kinds of things -- if
24 everyone understands the law and procedures, that's what it
25 amounts to.

1 You know, I happened to pick it up in this one; but
2 it's in others as well.
3 CHAIRMAN HUFF: I understand, and I certainly would
4 share your hope, but I've become a cynic.
5 MEMBER PELKOFER: Well, if we're going to be
6 judicial, which the courts keep telling us we're supposed to
7 do, it's inappropriate, in my estimation, to include that
8 kind of language in a determination that is not a
9 determination we made. It's simply a statement.
10 So, I'll make my objection a little stronger to it's
11 inclusion, and it is in this, and you will find it in some
12 of the other ones as well. It just seems totally
13 inappropriate to me.
14 CHAIRMAN HUFF: Staff, have we included this
15 statement in previous decisions?
16 MR. EICH: Yes, Mr. Chairman, we have. It's been
17 in --
18 MEMBER PELKOFER: It's in the next one too.
19 MR. EICH: Yes. I believe it's in some of the others
20 today.
21 CHAIRMAN HUFF: Is that a new practice?
22 MEMBER PELKOFER: No. I think this commissioner just
23 probably hadn't picked up on it before, although I don't
24 recall seeing it prior to today.
25 It just disturbs me. That's all.

1 If it doesn't disturb anyone else, it certainly
2 doesn't otherwise foul up the findings of determination.
3 CHAIRMAN HUFF: Well, it strikes me that it's a
4 factual statement, which does not have any harm in its
5 repetition. Although, categorizing it as a determination of
6 an issue seems to do some violence to the English language.
7 MEMBER PELKOFER: Well, I think that's my problem,
8 plus the procedural problem.
9 If we want to make a factual statement, then it ought
10 to be included in the facts and not in the determination.
11 But it's how it's relevant to the facts that escapes
12 me, as well.
13 So, if we're going to leave it in, let's leave it
14 where it is, I guess.
15 MEMBER CREIGHTON: Mr. Chairman, if the other
16 Commissioners desire, I will amend my motion to remove it.
17 MEMBER PELKOFER: Well, you know, I wanted the other
18 Commissioners to be aware of it, particularly my fellow
19 legal scholars on the Board and for reaction.
20 If no one is uncomfortable with it, I certainly don't
21 want to go any further with it.
22 MEMBER ACETUNO: Well, I better express my uncomfort
23 then.
24 CHAIRMAN HUFF: Carol, do you have anything to say?
25 MS. HUNTER: Well, I think whether it goes into one

1 category or another isn't so important.

2 However, in this particular claim, and this is a good
3 example of why we've done this. We have always, as a policy
4 matter, basically decided that proposed decisions we
5 wouldn't go through with detail, what exactly makes this
6 particular statute, each and every component of it, a new
7 program or higher level of service; and as a consequence,
8 that aspect of detail is deferred until paramaters and
9 guidelines.

10 So, they, in essence, become a further expression of
11 what your findings mean.

12 In this particular case I'll tell you why it's
13 particularly important. You have two statutes which had
14 predecessors. There was a procedure for filing claims with
15 the Controller, and there was a procedure for filing claims
16 with the Board of Control.

17 So, the question that this immediately raises is:
18 What part of these two statutes is a new program and higher
19 level of service? And this decision does not tell anybody.

20 MEMBER PELKOFER: Well, I would hope it does.

21 MEMBER ACETUNO: Well, that doesn't really address
22 the paragraph that Peter is talking about, because the
23 paragraph that Peter is talking about is a statement of
24 everything you do is subject to adoption of parameters and
25 guidelines on it.

He seems to suggest that, maybe, we've got other issues.

MS. HUNTER: I'm just saying that this is a good example, because our policy has always been that these are not highly detailed decisions, because part of the refinement will appear in the parameters and guidelines.

CHAIRMAN HUFF: As we just had.

MS. HUNTER: That's exactly right.

I don't care if it comes under this category or findings, if you want to modify it.

All I think is that it should be put in the decision that the simple finding that something is a mandate does not mean that it's totally reimbursable.

MEMBER CREIGHTON: Why not just remove it from the determination and put it at Item 8 under as a finding?

MEMBER CARLYLE: I'd almost consider making a new Roman Numeral III and call it something like "procedure" or something like that and highlighting it, because I think the point that was made by counsel is very important; and I'm afraid that if it was the last of a series of findings, then it might tend to get burried.

MEMBER PELKOFER: Well, then let me suggest that we put it in as Item 1. It's a disclaimer statement of how we operate and all that. So, let's put it in as boiler plate, Number 1, and make Number 2 findings of fact.

1 I mean, if it is a disclaimer, let's make it one and
2 state it as such. Let's keep the language consistent in
3 each one, exactly the same language, because that's the
4 purpose of it; and let's head it up as Number 1, and then
5 everybody knows that this finding is only worth a little
6 bit, and we really have to wait for something else.
7 And I'm not sure what that does, but certainly that
8 would make me happier than I am now.
9 MEMBER CREIGHTON: I will accordingly amend my
10 motion.
11 MEMBER PELKOFER: Thank you.
12 CHAIRMAN HUFF: Does everyone understand the motion?
13 MR. EICH: Question, Roman Numeral I will say what?
14 MEMBER PELKOFER: It will say basically what --
15 MEMBER CARLYLE: He wants to know if there will be a
16 title to it.
17 CHAIRMAN HUFF: Do you want a title?
18 MEMBER PELKOFER: Make one up.
19 MR. EICH: Okay.
20 CHAIRMAN HUFF: Okay. Then is there a motion to
21 adopt this?
22 MEMBER CREIGHTON: I've already made the motion.
23 CHAIRMAN HUFF: I'm losing track of my motions.
24 Those in favor, say aye.
25 (Unanimous.)

CHAIRMAN HUFF: Those opposed?

(No response.)

CHAIRMAN HUFF: Motion carries.

(Further untranscribed proceedings.)

MINUTES

COMMISSION ON STATE MANDATES
April 24, 1986
914 Capitol Mall, Room 540
Library and Courts Building
Sacramento, California

Present were: Chairperson Jesse R. Huff, Director, Department of Finance; Thomas A. Aceituno, Representative for the State Treasurer; Huston Carlyle, Director, Office of Planning and Research; Robert C. Creighton, Public Member; Peter Pelkofer, Deputy State Controller.

There being a quorum present, Chairperson Huff called the meeting to order at 10:19 a.m.

Item 1 Minutes

The Commission on State Mandates considered the minutes of the March 27, 1986 hearing. Without objection, the minutes were adopted.

Item 2 Test Claim
Chapter 405, Statutes of 1984
Pacific Islander Survey

Staff informed the commission that this item had been continued at the request of the claimant.

Item 3 Test Claim
Chapter 1018, Statutes of 1979
Superior Court Judgeship

Thomas Owens, representing the City and County of San Francisco, and Allan Burdick, representing the County Supervisors Association of California, appeared on behalf of the claimant. Robert Eich, Executive Director of the Commission on State Mandates summarized the claim and the decision of the administrative law judge (ALJ) for the members of the commission.

The commission discussed the need for taking additional evidence at this hearing or whether the commission should limit the action at this hearing to accepting or rejecting the ALJ decision. The commission decided to limit this hearing to the making of the inquiries needed to determine if the commission should accept or reject the ALJ decision.

The commission then discussed the merits of the ALJ decision. Member Carlyle made note that the ALJ, in Finding of Fact number VII found that the 27th judgeship was added in response to an upward trend in caseload filings. In addition, Member Carlyle noted that the ALJ decided that the addition of this judgeship was a quantitative change for the purpose of providing expanded judicial services to accomodate an increase in case filings.

Member Aceituno moved that the ALJ decision be accepted by the commission.

Peter Baldridge, representing the State Controller's Office, then requested the commission strike one paragraph from the ALJ decision because of its ambiguity. That paragraph appears on page 7 of the ALJ decision and discusses the role of the Controller in paying reimbursement claims as outlined in Government Code 17558.

Member Aceituno then amended his motion to delete the subject paragraph. The vote on the motion was unanimous. The motion carried.

Item 4 Test Claim
Chapter 1153, Statutes of 1983
Regional Notification Centers

William Spruance, representing the Paradise Irrigation District (claimant) noted that the costs incurred by the claimant have increased since the filing of the test claim. Furthermore, Mr. Spruance stated that the staff analysis in Issue #1 should be corrected to show that it is the claimant who must notify the excavating party.

Mr. Spruance stated that the claimant does not dispute its ability to collect fees to pay for the program. However, the claimant does dispute the constitutionality of Government Code Section 17556(a)(4), as this prohibition to the finding of a mandate is not contained in the constitution. Therefore, Mr. Spruance requested that prior to denying the claim because of Government Code Section 17556(a)(4), the commission find that the Chapter 1153/83 imposes a new program on the claimant and that the claimant has incurred costs as a result of Chapter 1153/83.

Member Aceituno asked whether the claimant has had to raise fees in order to pay for this program. C. Phillip Kelly, Jr., district manager for the claimant, stated that fees have not been raised as they have been able to absorb the cost of Chapter 1153/83 in their current fee structure.

Member Pelkofer moved to find that Chapter 1153/83 imposes a new program upon the claimant; that the claimant has incurred costs as a result of Chapter 1153/83, and that Government Code Section 17556(a)(4) prevents the commission from finding the existence of costs mandated by the state. The vote on the motion was unanimous. The motion carried.

Item 5 Test Claim
RWQCB Order 81-89 and
Resolution 82-10
Individual Sewage Disposal

Chairperson Huff noted the similarities between this item and the test claim submitted by the Lake Madrone Water District, which was denied by the commission at an earlier hearing.

Robert Booth, representing the claimant, briefly discussed the history behind the claim. Mr. Booth then stated that the exclusion of the term "executive order" appears to be unconstitutional as there is no such exclusion found in Article XIII B of the California Constitution. Mr. Booth also noted that the RWQCB orders issued against the claimant regard sewage disposal and that the claimant is not a sewage district, but rather a water district. Therefore, the orders issued against the claimant were issued improperly under the provisions of Division 7 of the Water Code.

Member Carlyle stated that the claimant's presentation contained several issues which needed to be separated. Member Carlyle then asked the state agencies to respond to the claimant's argument.

Joan Gray-Fuson, representing the State Water Resources Control Board and the Regional Water Quality Control Board stated that Government Code Section 17516 states that the definition of executive order specifically excludes any order, plan, requirement, rule or regulation issued by the Water Resources Control Board or by any regional board. Therefore, it is not necessarily relevant on whether the claimant is a water district or a sewage district. Ms. Gray-Fuson also noted that the RWQCB order 81-89 was issued pursuant to Division 7 of the Water Code.

Member Aceituno noted there is considerable controversey on whether the Order 81-89 was issued pursuant to Division 7 of the Water Code.

Member Aceituno moved that the claim be scheduled for hearing before an administrative law judge (ALJ) for adjudication and that one of the issues to be determined is whether the order 81-89 and resolution 82-10 were issued pursuant to Division 7 of the Water Code, commencing with Section 13000. The vote on the motion was unanimous. The motion carried.

In addition, the commission directed all parties to identify and comment on the issues the ALJ should address in developing a decision on the claim. The commission directed staff to put these issues on the commission's May 29, 1986 agenda for discussion and approval.

Item 6 Incorrect Reduction Claim
Chapter 1061, Statutes of 1973
Short-Doyle Program

This item was continued at the claimant's request.

Item 7 Parameters and Guidelines
Chapter 498, Statutes of 1983
Education Code Section 35160.5
Certification of Teacher Evaluators' Demonstrated Competence

Present at the hearing for this item were: William A. Doyle, San Jose Unified School District; Carol Miller, School Services of California, Inc.; Leslie Axlerod, State Department of Education (SDE); Jim Apps, Department of Finance (DOF); and, Pat Pollard, DOF.

William Doyle, representing the claimant, opened his remarks by stating that he generally agrees with staff's proposed parameters and guidelines and that he also agrees with the comments made by SDE regarding the proposed parameters and guidelines. He also stated that he had answered the issues presented by DOF and the Controller's Office in a written response. He then offered to answer questions.

Member Pelkofer suggested discussing the issues of the parameters and guidelines separately to clarify points of argument.

Jim Apps stated that the first section for discussion is under Part V., Reimbursable Costs. He said that DOF still takes exception to the finding of the commission that Section 35160.5 requires administrators to participate in training.

Mr. Apps then went to Section V.B.1. of the parameters and guidelines and suggested the removal of the words "training" and "assisting". Pat Pollard stated that the Mentor Teacher Program is designed specifically for the purpose of training and assisting teachers and that therefore, there should be no reimbursement through a mandate. William Doyle responded that the statute states that a new teacher's needs for training and assistance will be recognized. He noted that the proposed parameters and guidelines state that only the training and assistance over and above that usually provided to permanent teachers will be reimbursable.

Member Carlyle stated that if there already existed a mentor teacher program and another program for training and assisting was enacted, it could be assumed that the new program was for activities over and above that which was previously provided by the initial program.

Carol Miller explained that the Mentor Teacher Program is permissive and that not all districts have the program. Therefore, in some districts, the training which is provided by Section 35160.5 is the only training available.

Member Carlyle stated he does not know why the words "training" and "assisting" should be taken out of the parameters and guidelines. He stated that schools run the risk of not being reimbursed for some training and assisting of teachers because the Mentor Teacher Program is optional and, thus, some schools may not have the program. He stated that the two programs appear to be separate.

Member Creighton made a motion to leave the words "training" and "assisting" in place in the parameters and guidelines. The vote was: Member Aceituno, aye; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

Staff noted that the SCO had suggested the addition of one sentence to paragraph V.B.1. The language was before the commission as a hand-out. William Doyle indicated that he had no problem with inclusion of the language proposed by SCO. Member Pelkofer made a motion to include the language. The vote on the motion was unanimous. The motion carried.

Jim Apps then discussed V.B.1.c. of the parameters and guidelines. He stated that this proposed language could provide reimbursement for an activity which was a responsibility of school administrators already, and that it had not been demonstrated that more time was now being spent on this activity. He suggested deleting subsection "c".

Member Aceituno noted that the parameters and guidelines allow reimubrsement for the actual time spent in the activity and is therefore already covered under subsection "a" of the same section. Member Pelkofer moved to delete V.B.1.c. The vote on the motion was unanimous. The motion carried.

Jim Apps then suggested additional language for Section V.C.1. which would indicate that costs may be reimbursed only if a school district's prior policies did not provide a procedure for resolution of parent/pupil complaints. Carol Miller told the commission that if this language is adopted those school districts which had, on their own initiative, already adopted such a policy would not be reimbursed. Additionally, she said that those districts which had "lagged behind" in providing the required complaint process would be reimbursed. Member Pelkofer then explained the impact of the RTC in not penalizing entities for providing services at their option by reimbursing for such activities when and if they later become mandated. He further stated that the commission must now look to the State Constitution to determine if that concept of RTC Section 2234 makes sense under the Constitution.

Carol Hunter, Commission Counsel, indicated that the question here is whether or not the prior policy was a mandate. If it was, she said, the new statute would not be mandating anything new. She added that since it appears that this program was apparently not previously mandated it would qualify as a mandate.

Member Pelkofer suggested that DOF's proposed language not be added to the parameters and guidelines. He indicated that SCO procedures effectively prevent double reimbursement in these situations.

Member Pelkofer made a motion to adopt staff's proposed parameters and guidelines as amended by the commission's various motions. The vote was unanimous. The motion carried.

Item 8 Proposed Statement of Decision
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Member Pelkofer expressed concern regarding item 3 in the "Determination of Issues" section of the proposed decision. Member Pelkofer stated that this was not an issue determined by the commission, but rather, apppeared to be control language. Member Pelkofer suggested that this language be placed in a separate section of the proposed decision.

Member Creighton moved adoption of the proposed statement of decision with Member Pelkofer's amendment to include the control language in a separate section. The vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statement of Decision
Chapter 743, Statutes of 1978
Judicial Arbitration in Municipal and Justice Courts

This proposed Statement of Decision was amended by moving Item 4 from the "Determination of Issues" portion of the decision to a new section of the document.

Member Pelkofer made the motion to adopt the proposed Decision as amended. The vote was unanimous. The motion carried.

Item 10 Proposed Statement of Decision
Chapter 1567, Statutes of 1984
Minimum Tire Wear

This proposed Statement of Decision was amended by moving Item 3 from the "Determination of Issues" portion of the Decision to a new section of the document.

Chairperson Huff made the motion to adopt the proposed Decision as amended. The vote was unanimous. The motion carried.

Item 11 Proposed Statement of Decision
SWRCB Order WQ85-10
Sediment Removal

Member Pelkofer moved that the proposed decision be adopted. The vote on the motion was unanimous. The motion carried.

With no further items on the agenda, Chairperson Huff adjourned the hearing at 12:00 p.m.

ROBERT W. EICH
Executive Director

RWE:cc:1086A

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	)	
	)	
County of Fresno	)	No. CSM-4204
Claimant	)	
	)	

DECISION

The attached Proposed Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on April 24, 1986.

IT IS SO ORDERED April 24, 1986.

Jesse Huff, Chairman
Commission on State Mandates

WP 1044A

BEFORE THE
COMMISSION ON STATE MANDATES

CLAIM OF: County of Fresno Claimant	)	No. CSM-4204

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on March 27, 1986, in Sacramento, California, during a regularly scheduled meeting of the commission. Paul Robinson, and Vincent McGraw appeared on behalf of the County of Fresno. Carol Miller appeared on behalf of the Education Mandated Cost Network. There were no other appearances.

Evidence, both oral and documentary, having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

11.

FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on November 27, 1985, by the County of Fresno.

2. The subject of the claim is Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984.

3. Chapter 486, Statutes of 1975 established the Board of Control's authority to hear and make determinations on claims submitted by local governments that alleges costs mandated by the state. In addition, Chapter 486/75 contained provisions authorizing the State Controller's Office to receive, review and pay reimbursement claims for mandated costs submitted by local governments.

4. Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandated cost claims from local governments.

5. The County of Fresno has incurred increased costs as a result of having to file test claims and reimbursement claims which are required by Chapter 486/75 and Chapter 1459/84.

6. The County of Fresno's increased costs are costs mandated by the state.

7. Government Code Section 17514 defines costs mandated by the state as 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, 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.

III.

DETERMINATION OF ISSUES

1. The commission has authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 impose a reimbursable state mandate upon local government. The County of Fresno has established that these two statutes have imposed a new program and an increased level of service by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the cost of the mandated program.

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
November 20, 1986
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

A. ROLL CALL

B. MINUTES

Item 1 Hearing of September 25, 1986

C. TEST CLAIMS

Item 2 Chapter 1, Statutes of 1984
Health Fee Elimination

Item 3 Chapter 498, Statutes of 1983
Graduation Requirements

Item 4 Chapter 668, Statutes of 1985 &
Chapter 1609, Statutes of 1984
Domestic Violence

D. PARAMETERS AND GUIDELINES

Item 5 Chapter 486, Statutes of 1975 &
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

E. PARAMETER AND GUIDELINE AMENDMENT

Item 6 Chapter 961, Statutes of 1975
Collective Bargaining

F. STATEWIDE COST ESTIMATES

Item 7 Chapter 498, Statutes of 1983
Teacher Evaluator's Demonstrated Competence

Item 8 Chapter 743, Statutes of 1978
Judicial Arbitration

Item 9 Chapter 1018, Statutes of 1979
Superior Court Judgeship

G. STATEMENTS OF DECISION

Item 10 Chapter 566, Statutes of 1974
Patient Aftercare Plans

Item 11 Chapter 818, Statutes of 1985
Water Analysis Plans

H. DISCUSSION ITEMS

Item 12 Deficiency Appropriation

Item 13 Hearing Schedule for the 1987 Calendar Year

Item 14 Regulations

I. LEGISLATION

J. EXECUTIVE SESSION

- Personnel
- Litigation

Note: All back-up material and supporting documentation for this meeting is available for public inspection at the office of the Commission on State Mandates, 1130 K Street, Suite LL50, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP 1130A

Hearing: November 20, 1986
File Number: CSM-4204
Staff: Stephen Lehman
WP 1421A

PROPOSED PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Executive Summary

At its hearing of April 24, 1986, the commission found that Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 imposed state mandated costs upon local government by prescribing the procedures which must be followed before state mandated costs are recognized and subsequently paid.

The Department of Finance, the State Controller's Office, and the Education Mandated Cost Network have submitted comments and suggested changes to the claimant's proposed parameters and guidelines.

Commission staff has suggested amendments to the claimant's proposed parameters and guidelines, and recommends that the commission adopt the parameters and guidelines as amended by staff.

Claimant

County of Fresno

Chronology

11/27/85	Claim filed with the Commission (CSM).
3/27/86	CSM approves test claim.
4/24/86	CSM adopts Statement of Decision.
6/23/86	Claimant submits proposed parameters and guidelines.
9/17/86	Claim continued from 9/25/86 hearing to 11/30/86 hearing by mutual agreement between staff and claimant.

Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

These statutes established the process by which local agencies are to receive reimbursement for state-mandated programs by prescribing the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the State Controller's Office.

State Agency Recommendations

The Department of Finance (DOF) after reviewing the proposed parameters and guidelines has three areas of concern:

1. The reference to "legal costs" in Item V B and "legal counsel" in Item VI D should include language limiting reimbursement to the hourly rate which equals the rate charged by the Attorney General of the State of California. Currently the rate is $72.70 per hour. This would be consistent with existing language in parameters and guidelines of other mandates.

2. The DOF does not concur with the language in Item V B providing reimbursement of the costs incurred in "... assisting with the enactment of appropriation legislation." This is a function of the Commission on State Mandates and not of local governments.

3. The DOF notes that Item VI A indicates that "a list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate." The DOF believes that this process is appropriate for the initial claim. However, if the Legislature provides funding for this mandate, they believe that the parameters and guidelines for each of the funded mandates should be amended to include the costs of preparing the claim for that particular mandate.

   (See Attachment "C")

The State Controller's Office (SCO) has submitted an alternative set of proposed parameters and guidelines. However, the most notable areas of change are:

(1) Only the costs incurred by local agencies and school districts for preparing and presenting successful test and incorrect reduction claims would be reimbursable.

(2) Because the state has no control over the nature and extent of the contractual relationship between local agencies and their representatives, reimbursement for the costs of representatives other than employees could not exceed the amount which would have been reimbursed had the local agency's or school district's own employees prepared, presented or submitted the claim.

(3) Training classes related to the preparation and presentation of test, reimbursement, and incorrect reduction claims are not reimbursable. With regard to reimbursement claims, the Controller makes available for each mandate a full set of claiming instructions. In addition, the Controller's staff is available to respond to questions from local agencies and school districts regarding claims for reimbursement.

With regard to test and incorrect reduction claims, the basic requirements for the filing of such claims with the commission are set forth in statute.

(4) The cost of claiming reimbursement under this mandate should not be reimbursable because claimants could "...potentially claim costs for claiming costs for claiming costs, ad infinitum."

(See Attachment "D")

The Education Mandated Cost Network (EMCN) has requested three changes to the proposed parameters and guidelines, which are as follows:

(1) Section V, Item A, second sentence should be amended to read: "The Commission on State Mandates, in approving this test claim, established that local governments (counties, cities, school districts, special districts, etc.), cannot be made financially whole unless all State mandated costs-both direct and indirect-are reimbursed."

(2) Travel expenses should be added to Section V, Item B.

(3) Section VI, Item F, should be amended to include the appropriate language relative to indirect cost rates for K-12 school districts, county offices of education, and community college districts.

(See Attachment "E")

Staff Analysis

The DOF, SCO, and EMCN have suggested a number of changes to the claimant's proposed parameters and guidelines (See Attachment "B"). Staff's proposed parameters and guidelines include some of these proposed changes and not others. (See Attachment "A"). The following is an item-by-item analysis of each proposed change.

I. Department of Finance

Issue 1: Legal Costs

The DOF has suggested that reimbursement for legal costs and/or legal counsel be limited to the current hourly rate charged by the Attorney General's Office, which is $72.70 per hour. The DOF states that this would be consistent with existing language in parameters and guidelines of other mandates.

In response the claimant states that if this is consistent with existing policy, they would not object (See Attachment "F"). However, staff would note that the majority of other parameters and guidelines do not contain any such limitation. After discussing this issue further with the DOF, it was revealed that this limitation stems from Budget Act Item 9810-001-001 which establishes a maximum state reimbursable hourly rate of $90 for attorney fees. Staff was also informed that this item has been vetoed by the Governor in the current year budget. Consequently, staff recommends that Section VI G. be added to the parameters and guidelines to read as follows:

G. Legal Costs

The hourly rate for legal counsel shall not exceed the greater of the following:

1) The hourly rate charged by the Attorney General of the State of California.

-or-

2) The hourly rate established by Budget Item 9810-001-001.

Issue 2: Legislative Activities

The DOF recommends the deletion of language in Section V B. providing reimbursement of costs incurred as a result of "... assisting with the enactment of appropriation legislation." The DOF states that this is a function of the commission and not of local governments.

In response, the claimant states that if local representatives are asked to testify before a legislative committee, then such costs should be reimbursed. Staff is in agreement with the DOF and would note that this mandate is a result of Chapter 486/75 and Chapter 1459/85, neither of which "mandate" local government to assist with the enactment of a claims bill. Therefore, staff recommends the deletion of this language in Section V B.

Issue 3: Method of Reimbursement

The DOF suggests that after the initial claiming year, the costs for preparing a particular reimbursement claim be included as part of each existing mandate rather than as a separate reimbursement claim filed under the provisions of Chapter 486/75 and Chapter 1459/84.

In response, the claimant states that this would require increased recordkeeping and higher costs at the local level, and because of time constraints on the submission of reimbursement claims, it would be difficult to assess claiming costs while the claims are being prepared. In addition, the claimant notes that such an approach is inconsistent with current procedures and would intermix fiscal year costs. Therefore, the claimant objects to the DOF suggestion.

Staff also recommends against the DOF suggestion because it is inconsistent with the current process of reimbursing mandated cost claims. Currently, when a mandate is found by the commission, parameters and guidelines are developed for that particular mandate. These parameters and guidelines are then used to develop a statewide cost estimate for that mandate, which is then included in the Local Government Claims Bill. If the Legislature makes an appropriation for this mandate, that appropriation is to pay for the costs of that specific mandate. However, the DOF is suggesting that costs incurred as a result of this mandate be claimed in the reimbursement claims of other mandates.

It is staff's position that this method is contrary to current practice and would hinder the State Controller's Office audits of this mandate, because there would not be specific reimbursement claims submitted on this mandate, and which are being paid from a specific appropriation for this mandate.

II. State Controller's Office Recommendation

Issue 1: Reimbursement of Successful Claims Only

The SCO recommends that the parameters and guidelines be limited to reimbursing costs for successful test claims and incorrect reduction claims. Both staff and the claimant agree that this would be consistent with the arguments made before the commission on the test claim. Therefore, staff recommends this limitation be adopted and has amended section VI B and C to reflect this change.

It should be noted that the claimant maintains that the costs of a successful test claim and incorrect reduction claim shall include court responses, if an adverse Commission ruling is later reversed, and costs that cross fiscal years. Because the time constraints established for filing for mandated costs may be at odds with the multiple fiscal years that might be required for a successful test claim or incorrect reduction claim ruling, the reimbursement procedure must acknowledge that cost are recoverable in total. It is staff's position that this would be consistent with the commission's finding that Chapter 486/75 and Chapter 1459/84 imposed a state mandated program upon local government.

Issue 2: Contractual Services

The SCO recommends restricting the reimbursement of contracted services to the cost that would have been incurred if the claims had been prepared instead by local agency employees. The SCO states that this restriction is necessary because:

> If the State were to reimburse all amounts due under contracts, the local agencies and school districts would have no incentive to control its contracted costs. The better rule, which would encourage economy in the use of representatives to file mandated cost claims, is to limit reimbursement to such amounts as would have been incurred using its own employees.

The claimant opposes this restriction because they believe that it is speculative and may not result in full reimburement if a claimant chooses to utilize consultant services when attempting to obtain reimbursement for mandated costs.

Staff is also opposed to such a restriction because restrictions to contractual services are not found in other parameters and guidelines, and there may be instances where the use of contracted services may be more cost effective than using local government employees. Furthermore, both staff and the claimant believe that this proposal would restrict managerial options currently available to local government officials.

Issue 3: Training Costs

The SCO states that training classes related to the preparation and presentation of test claims, reimbursement claims, and incorrect reduction claims should not be reimbursable costs. Specifically, the SCO states following:

> With regard to reimbursement claims, the Controller makes available for each mandate a full set of claiming instructions. In addition, the Controller's staff is available to respond to questions from local agencies and school districts regarding claims for reimbursement. Moreover, most reimbursement claims are filed by accountants already possessed of the knowledge and skills necessary to obtain reimbursement.

> With regard to test and incorrect reduction claims, the basic requirements for the filing of such claims with the commission are set forth in statute. Again, training appears to be unnecessary.

However, the claimant alleges that the SCO's position is inconsistent with the procedures established with other existing mandates. According to the claimant, "Such training has been a mutually advantageous tool used by the State to clarify potential misunderstandings; thus its representatives are often present at these classes."

While understanding the SCO's concerns, staff believes that there may be situations in which a training seminar may be beneficial to local government and aid in future dealings with the SCO and commission staff. Therefore, if a claimant can establish the direct relevance of a training seminar/class to this mandate, then staff believes the claimant is entitled to reimbursement.

However, staff recommends the deletion of two items the claimant has included in the category of training costs. These are membership costs and publications. Staff does not believe that the costs of membership in various associations and organizations and the costs of corresponding publications should be reimbursed as a result of the commission's finding that Chapter 486/75 and 1459/84 impose costs mandated by the state. It is our position that memberships and publications are obtained at the claimant's option and are not directly related to any particular mandate finding by the commission.

Issue 4: Claiming Costs Disclaimer

The SCO states that the cost of claiming reimbursement under this mandate is "expressly not reimbursable". The SCO states the "... claimants could potentially claim costs for claiming costs for claiming costs, ad infinitum." Both staff and the claimant believe that this prohibition is unnecessary.

It is staff's position that such a change would be inconsistent with the commission's decision to find that Chapter 486/75 and Chapter 1459/84 impose costs mandated by the state. Therefore, staff recommends the commission not adopt this change and thus permit local governments to obtain reimbursement for submitting a reimbursement claim for this mandate. This means that when a claimant submits their reimbursement claim for Chapter 486/75 and Chapter 1459/84, one of the programs they could list as reimbursable would be Chapter 486/75 and Chapter 1459/84.

Issue 5: Incorrect Reduction Claims

The claimant did not include reimbursement for incorrect reduction claims in their proposed parameters and guidelines. However, the SCO states that incorrect reduction claims are considered to be an element of the

reimbursement claim process. Therefore, the SCO proposes that these claims be included in the parameters and guidelines, with several notable restrictions. These are:

1) Reimbursable activities for incorrect reduction claims include the appearance of only one employee or representative before the commission on State Mandates to present the claim.

2) Activities related to incorrect reduction claims are reimbursable only to the extent that the claim is successful. If such a claim is only partly successful, the local agency shall be reimbursed for the percentage of its costs which the dollar amount of its successful claim bears to the dollar amount of the incorrect reduction claim as a whole up to the dollar amount of its successful claim.

   However, in no event shall such reimbursement exceed the dollar amount of the successful portion of the incorrect reduction claim.

The claimant states that these restrictions would be unfair because there are situations in which departmental experts are needed to explain the nature of particular program costs, and there is no true correlation between the costs of preparing a claim and the actual recovery of that claim.

Staff agrees with the claimant. It is our position that these restrictions tend to be punitive in nature and not consistent with the commission's finding that this process has imposed state mandated costs. Furthermore, there appears to be no statutory basis for including such restrictions. Therefore, staff does not recommend the commission adopt either of these restrictions.

Issue 6: Other Reimbursement

The claimant notes that the commission has recently differentiated between "offsetting cost savings" from "new revenues". Consequently, the claimant states that the parameters and guidelines may need to be amended to reflect this differentiation. However, both staff and the claimant do not believe that reimbursement from other sources will be relevant to this claim. In addition, staff does not believe that commission discussion on an unrelated test claim should be taken into account on this claim.

III. Educational Mandated Cost Network

Neither staff, not the claimant have any objections to the proposed changes suggested by the EMCN. Therefore, staff recommends the inclusion of these changes (See Attachment "E").

Staff Recommendation

Based upon the above comments and discussion, staff is recommending the adoption of the staff proposed parameters and guidelines (See Attachment "A"). The commission should note that staff's proposal in basically the claimant's proposal with staff recommended modifications, and technical changes.

Proposed
Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of ~~implementing~~ Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the ~~decision~~ commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for ~~the~~ that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d) (3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs - both direct and indirect - are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities - Test Claims

All costs incurred by local governments in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, ~~assisting with the enactment of appropriation legislation,~~ and helping with the drafting of required claiming instructions. The costs of all successful test claims ~~prepared in good faith~~ are reimbursable.

Costs that may be received include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities - Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local government. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes and meetings, publications, and memberships designed to assist the claimant in identifying and correctly preparing State-required documentation. Such costs include, but are not limited to, salaries and benefits, transportation, registration/membership fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local Government, with the exception of public school employers, Claimants have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

The hourly rate for legal counsel shall not exceed the greater of the following:

1) The hourly rate charged by the Attorney General of the State of California.

-or-

2) The hourly rate established by Budget Item 9810-001-001.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

WP 1422A

RECEIVED
JUN 23 1986
COMMISSION ON STATE MANDATES

Gary W. Peterson
Auditor-Controller/Treasurer

June 17, 1986

Stephen R. Lehman
Commission on State Mandates
1025 "P" Street, Room 177
Sacramento, California 95814

Dear Mr. Lehman:

Attached are the proposed Parameters and Guidelines for the Mandate Reimbursement Process (Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984). This draft is submitted in response to your letter of March 31, 1986, and based on the Commission's statement of decision which became effective on April 24, 1986.

Should you have any questions or comments in this regard, please contact Paul Robinson in our Cost/Grants Division at (209) 488-3496.

Sincerely,

Gary W. Peterson
Auditor-Controller/Treasurer

GWP:PR:yg

Attachment

4071*

P.O. Box 1247/Fresno, California 93715-1247/(209) 488-3496
Equal Employment Opportunity – Affirmative Action – Handicap Employer

179

Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Controls authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of implementing Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the decision found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all mandate costs - both direct and indirect - are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities - Test Claims

All costs incurred by local governments in preparing test claims are reimbursable. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, assisting with the enactment of appropriation legislation, and helping with the drafting of required claiming instructions. The costs of all claims prepared in good faith are reimbursable.

Costs that may be received include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities - Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of reimbursement claims to the State Controller are recoverable by the local government. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes, meetings, publications, and memberships designed to assist the claimant in identifying and correctly preparing State-required documentation. Such costs include, but are not limited to, salaries and benefits, transportation, registration/membership fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Claimants have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California

SIGNATURE OF AUTHORIZED REPRESENTATIVE _____ DATE _____

TITLE _____ TELEPHONE NUMBER _____

State of California

CSM Attachment C

Memorandum

Date : JUL 31 1986

To : Robert W. Eich, Executive Director
Commission on State Mandates

From : **Department of Finance**

Subject: Proposed Parameters and Guidelines for Chapter 1459/84, Mandate Reimbursement Process

We have reviewed the proposed parameters and guidelines for Chapter 1459, Statute of 1984 (mandate reimbursement process). We have several areas of concern:

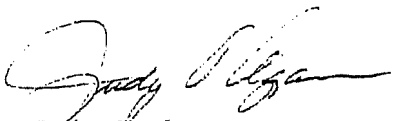
1. We believe that the reference to "legal costs" in Item V B and "legal Counsel" in Item VI D should include language limiting reimbursement to the hourly rate which equals the rate charged by the Attorney General of the State of California. Currently this rate is $72.70 per hour. This would be consistent with existing language in parameters and guidelines of other mandates.

2. We do not concur with the language in Item V B providing reimbursement of the costs incurred in "... assisting with the enactment of appropriation legislation." This is a function of the Commission on State Mandates and not of local governments.

3. Item VI A indicates that "a list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate." We believe that this process is appropriate for the initial claim. However, if the Legislature provides funding for this mandate, we believe that the parameters and guidelines for each of the funded mandates should be amended to include the costs of preparing the claim for that particular mandate. This method, although, contrary to the current procedure of funding each mandate individually, would be a more efficient and would facilitate State Controller audits in the future.

As noted in our analysis of the original claim, the Department of Finance does not agree with allowing reimbursement of the costs of preparing and presenting test claims and reimbursement claims.

If you have any questions on our recommendations, please contact James Apps of my staff at (916) 324-0043.



Judy A. Agan
Assistant Program Budget Manager

LR:541

cc: Peter Schaafsma, Legislative Analyst's Office
Glen Beatie, State Controller's Office

CSM Attachment D

RECEIVED
JUL 30 1986
COMMISSION ON
STATE MANDATES

KENNETH CORY

Controller of the State of California

SACRAMENTO, CA 95805
(916)445-7089

July 30, 1986

Mr. Stephen R. Lehman
Program Analyst
Commission on State Mandates
1025 P Street, Room 177
Sacramento, CA 95814

Dear Mr. Lehman:

Re: Proposed Parameters and Guidelines
Chapters 486 of 1975 and 1459 of 1984

We have reviewed the proposed Parameters and Guidelines as submitted by the County of Fresno. Rather than attempt to set forth all the deletions and amendments necessary to correct the problems in the County's proposed language, please find enclosed alternative language which would be acceptable to this office.

The most notable features of our proposal are:

(1) Only the costs incurred by local agencies and school districts for preparing and presenting successful test and incorrect reduction claims would be reimbursable. This is consistent with Mr. Robinson's express representation at the hearing that denied or frivolous claims would not be reimbursable. There is no apparent reasons why the same rule should not apply to incorrect reduction claims. It would encourage parties to carefully consider the merits of their claims, or bear their own costs.

(2) Reimbursement for the costs of representatives other than employees could not exceed the amount which would have been reimbursed had the local agency's or school district's own employees prepared, presented or submitted the claim. The State has no control over the

nature or extent of the contractual relationship between local agencies, school districts, and their representatives. If the State were to reimburse all amounts due under contracts, the local agencies and school districts would have no incentive to control its contracted costs. The better rule, which would encourage economy in the use of representatives to file mandated cost claims, is to limit reimbursement to such amounts as would have been incurred using its own employees.

(3) Training classes related to the preparation and presentation of test, reimbursement, and incorrect reduction claims are not reimbursable. With regard to reimbursement claims, the Controller makes available for each mandate a full set of claiming instructions. In addition, the Controller's staff is available to respond to questions from local agencies and school districts regarding claims for reimbursement. Moreover, most reimbursement claims are filed by accountants already possessed of the knowledge and skills necessary to obtain reimbursement.

With regard to test and incorrect reduction claims, the basic requirements for the filing of such claims with the Commission are set forth in statute. Again, training appears to be unnecessary.

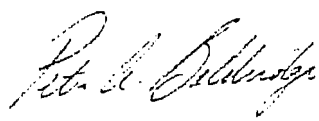
Moreover, reimbursement for training costs would create considerable potential for abuse. Mandated cost consultants, eager to increase their income through training fees, would likely devise an array of courses for the supposed benefit of claimants. Claimants would have little incentive not to attend such courses, even where the benefits are questionable or non-existent. Since the State is required to reimburse only those increased costs required by a mandate, and training programs are discretionary, the better rule appears to be to disallow training costs altogether.

(4) The cost of claiming reimbursement under this mandate is expressly not reimbursable. Otherwise, claimants could potentially claim costs for claiming costs for claiming costs, ad infinitum.

Please contact me if you have any questions.

Very truly yours,

KENNETH CORY, STATE CONTROLLER

By 
Peter A. Baldridge
Attorney

PAB:df
cc: Jim Apps, Dept. of Finance
: Carol Miller, School Services of Calif.
: Allan Burdick, County Supervisors Assn.
: Dan Harrison, League of California Cities
: Carol Hunter, Attorney General's Office
: Peter Schaafsma, Legislative Analyst's Office
: Paul Robinson, County of Fresno, Cost/Grants Div.
: Glen Beatie

Proposed Parameters and Guidelines

Chapter 486, Statutes of 1975

and

Chapter 1459, Statutes of 1984

I. Summary of Mandate

Chapter 486, Statutes of 1975, authorized the Board of Control to determine claims submitted by local agencies and school districts alleging that such local agency or school district had not been reimbursed for all costs mandated by the State Specifically, it authorized local agencies and school districts to submit claims alleging that the Controller had incorrectly reduced a reimbursement claim, an executive order had incorrectly specified that it did not involve any cost mandated by the State, and that the claim was not paid because it was submitted after specified deadlines. It further authorized local agencies and school districts to submit claims for reimbursement to the Controller.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates to hear mandated cost claims, and authorized it to adopt procedures to receive and hear test and reimbursement claims.

II. Commission on State Mandates' Decision

On March 27, 1986, the Commission on State Mandates determined that these chapters imposed a new program resulting in "costs mandated by the state" as defined in Government Code § 17514 (Stats. 1984, Chap. 1459, § 1). Specifically, the Commission identified the requirements that local agencies and school districts file test claims to establish that costs incurred are mandated by the State, and file reimbursement claims with the Controller to obtain reimbursement, to be a new program which requires increased costs. Accordingly, it found such costs to be reimbursable.

III. Eligible Claimants

Each local agency and school district which incurs increased costs necessary to file reimbursement claims, or successful or incorrect reduction claims is eligible to claim reimbursement for those costs.

IV. Period of Claim

Only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year

may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts shall be reimbursed for the increased costs which they are required to incur to file reimbursement claims, and test and incorrect reduction claims to the extent they are successful, pursuant to Chapters 486 of 1975 and 1495 of 1984.

B. Reimbursable Activities - Test Claims

Reimbursable activities include those required to be performed by local agencies and school districts for the preparation and presentation of successful test claims by their employee(s) or

representative(s). Such costs include the collection of cost data and the development of parameters and guidelines. Claims presented for the activities of representatives, other than employees, under contract with the local agency or school district shall be reimbursed except to the extent the contractual costs exceed the reasonable cost which would have been incurred had the claim been prepared or presented by employees of the local agency or school district.

Specific reimbursable costs include salaries, benefits, materials, supplies, and transportation reasonably and necessarily expended for the preparation and submission of the claim, plus allowable overhead. The costs of training classes, publications, and memberships in organizations, related to the preparation and presentation of test claims are not reimbursable.

C. Reimbursable Activities-Reimbursement Claims

Reimbursable activities include those required to be performed by representatives or employees of local agencies and school districts for the preparation and submission of one annual reimbursement claim to the Controller for each mandate. Claims presented for the activities of

representatives, other than employees, under contract with the local agency or school district shall be reimbursed except to the extent the contractual costs exceed the reasonable cost which would have been incurred had the claim been prepared or submitted by employees of the local agency or school district. Specific reimbursable costs include salaries, benefits, materials, supplies, and postage reasonably and necessarily expended for the preparation and submission of the claim, plus allowable overhead. The costs of training classes, publications, and memberships in organizations, related to the preparation of reimbursement claims are not reimbursable.

(1) Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for incorrect reduction claims include the appearance of one employee or representative before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for reimbursement claims. Where representatives are used to prepare and present such claims, the same limitations as set forth for test and reimbursement claims apply. The costs of training classes, publications, and memberships in organizations related to the

preparation and presentation of incorrect reduction claims are not reimbursable.

Activities related to incorrect reduction claims are reimbursable only to the extent that the claim is successful. If such a claim is only partly successful, the local agency shall be reimbursed for that percentage of its costs which the dollar amount of its successful claim bears to the dollar amount of the incorrect reduction claim as a whole up to the dollar amount of its successful claim. For example, if a local agency alleges two incorrect reductions, one comprising 75% of the dollar value of the incorrect reduction claim and the other comprising 25%, and only the 25% portion is successful, only 25% of the cost of preparing and presenting incorrect reduction claim costs will be reimbursed. However, in no event shall such reimbursement exceed the dollar amount of the successful portion of the incorrect reduction claim.

(2) No reimbursement shall be paid for preparing and submitting a reimbursement claim under this mandate.

VI. Claim Preparation and Submission

A. Filing

Each claim for reimbursement pursuant to this mandate must be timely filed, and set forth a listing of each mandate for which reimbursement is claimed or each mandate the amount of reimbursement claimed for claim preparation must be provided, together with documentation sufficient to support that amount.

B. Supporting documentation

Claimed costs should be supported by the following:

1. Salaries and Benefits -

   a. Employee or representative name;

   b. Affiliation of representative other than employee;

   c. Position (job title) of employee(s) who prepared, presented, or submitted the claim, or who could have and would have

prepared, presented or submitted the claim but for the use of a non-employee representative (s);

d. Productive hourly rate of position described in paragraph VI, B, 1, (c), (above);

e. Salary and benefit amounts of the position described in paragraph VI. B, 1,(c), (above).

f. Description of the tasks performed and time expended for each task.

2. Contracted Services - Representative

a. Copies of the contract between the local agency or school district and the individual representative or organization employing the representative of the local agency or school district.

b. Copies of the invoices paid for services for each mandate.

3. Materials and Supplies -

(A) Any direct costs for materials or suppliesexpended specifically for claiming reimbursement for each mandate.

4. Allowable overhead

Counties and cities have the option of using 10% of direct labor as indirect costs or claiming indirect costs through a departmental indirect cost rate prepared in accordance with the provisions of Office of Management and Budget Circular No. A-87, for the program.

School districts must use the J-41A non-restrictive indirect cost rate provisionally approved for the district by the State department of Education. The rate, however, must not be applied items of costs claimed in complying with the mandate, if those same costs were included in cost centers identified as General Support, specifically EDP Codes 400, 405 and 410 in Column 3.

Community college districts may use either the J-41A, J-73A, or Federal Guideline FMC

73-8. However, if FMC 73-8 is used, an adjustment must be made so that it will compute a fair share of indirect costs applicable to the mandated. Refer to Exhibit B-1 of Page III-33, Budget and Accounting Manual, California Community Colleges, December 1978 Edition, for adjustments as follows:

(a) Redesignation as Direct Cost, any cost in the indirect column which does not provide administrative support to personnel that are assigned to mandated cost activities. Examples: Deans and Dept. Heads, Dues and Memberships, Speeches and Bulletins, President's Report, Provost's Office (academic activities), Library, etc. In addition, 93% of Maintenance and Operations should be redesignated as a direct cost, since practically all these costs go toward the support of instructional activities. However, a higher percentage is allowable if the college can support its allocation basis.

(b) Redesignation as Direct Cost, any employee performing mandated cost activities, if shown on the cost plan as an indirect cost.

VII. Supporting Data

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

That the foregoing is true and correct, that I am the person authorized by the local agency to file claims

for funds with the State of California, and that Sections 1090 and 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

William Doyle, Chairman
Deputy Administrator
San Jose Unified School District
1605 Park Avenue
San Jose, California 95126
408/998-6094

CSM Attachment E

MANDATED COST NETWORK

Norman E. Miller, Consult
Vice President
School Services of Califor
1127 - 11th Street, Suite
Sacramento, California 9
916/446-7517

July 28, 1986

RECEIVED
JUL 31 1986
COMMISSION ON STATE MANDATES

Mr. Stephen R. Lehman, Program Analyst
Commission on State Mandates
1025 P Street, Room 177
Sacramento, California 95814

Dear Steve:

This letter is in response to the proposed parameters and guidelines for the Mandate Reimbursement Process, Chapters 486/1985, and 1459/1985. In general, the proposed parameters and guidelines appear to be relatively comprehensive and reasonable, but I do have a few suggestions. The first appears on Section V, Item A, second sentence. I would propose the second sentence be changed to read: "The Commission on State Mandates, in approving this test claim, established that local governments (counties, cities, school districts, special districts, etc.), cannot be made financially whole unless all State mandated costs--both direct and indirect--are reimbursed."

Additionally, in Item B of the same section, I would suggest adding travel expenses to the list of costs which may be reimbursed. In Section VI, Item F, I would suggest adding the appropriate language relative to indirect cost rates for K-12 school districts, county offices of education, and community college districts.

Thank you for your consideration of these suggestions. If you have any questions, or if I can be of assistance, please do not hesitate to call.

Sincerely,

Carol

CAROL A. MILLER, Consultant
Education Mandated Cost Network

CAM:lmf\0050:86

CSM Attachment F

Gary W. Peterson
Auditor-Controller/Treasurer

August 28, 1986

Mr. Stephen R. Lehman
Program Analyst
Commission on State Mandates
1025 P Street, Room 177
Sacramento, California 95814

Dear Mr. Lehman:

We have reviewed the comments of the Education Mandated Cost Network, Department of Finance, and the State Controller concerning our proposed parameters and guidelines for the Mandate Reimbursement Process (Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984). Our concerns about some of these suggestions are attached for your consideration.

Please let us know if the tentative hearing date before the Commission needs to be changed until existing disagreements can be resolved. Direct any questions or comments to Paul Robinson in our Audits Division at (209) 488-3496.

Sincerely,

Gary W. Peterson
Auditor-Controller/Treasurer

GWP:PR:dm

Attachment

4787*

P.O. Box 1247/Fresno, California 93715-1247/(209) 488-3496
Equal Employment Opportunity — Affirmative Action — Handicap Employer

Analysis of the Responses to Fresno County's
Proposed Parameters and Guidelines for the
Mandate Reimbursement Process
(Chapter 486/75 and Chapter 1459/84)

On June 17, 1986, Fresno County submitted its proposed parameters and guidelines for the Mandate Reimbursement Process (Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984). This analysis is in response to the suggested modifications submitted by the Mandated Cost Network, Department of Finance, and the State Controller. In addition, it includes some of the concerns expressed by the CSAC SB-90 Committee.

Mandated Cost Network

We have no objections to the three suggestions raised by Carol A. Miller in her July 28, 1986, letter for the Education Mandated Cost Network.

Department of Finance

1. Legal Costs -- Department of Finance recommends that the reimbursement for "legal costs" and "legal counsel" be limited to the hourly rate charged by the Attorney General of the State of California. Normally we would object to such a constraint, for it could result in less than full cost recovery. However, if as alleged, this is consistent with the existing policy for other mandates, then we would not object to making these parameters and guidelines consistent.

2. Legislation Activities -- Department of Finance objects to the reimbursement of costs associated with the legislative appropriation process. Again, our concern is identifying all costs associated with the mandate process. This wording was included not for lobbying activities, but rather to cover any costs that local agencies might incur if they were asked to supply input to appropriate legislative bodies or agencies. For example, if local representatives should be asked to testify before a legislative committee, then such costs should be reimbursed.

3. Method of Reimbursement -- Department of Finance recommends that, after the initial claiming year, the costs for preparing mandates be included as part of each existing mandate rather than as a separate claim. While we are sympathetic to the intention behind this recommendation, we believe it is a less practical alternative. First, it would require increased recordkeeping and higher costs at

the local level. Second, because of the time constraints tied to the submission of reimbursement claims, it would be difficult to accurately calculate claiming costs while the claims are still being prepared. Third, such an approach would be inconsistent with current procedures and would intermix fiscal year costs. Therefore, we disagree with this suggestion.

State Controller

Rather than just suggest changes, Peter A. Baldridge has submitted alternative parameters and guidelines. The major points of contention are as follows:

1. Reimbursement of Successful Claims -- Mr. Baldridge proposes that the P's and G's be limited to reimbursing costs for successful test claims and incorrect reduction claims. This would be consistent with the arguments made before the Commission, though some contend that such a restriction is too limited. We would add that such costs shall include all local agency costs - including court responses, if an adverse Commission ruling is later reversed, and costs that cross fiscal years. Because the time constraints established for filing for cost recovery may be at odds with the multiple fiscal years that might be required for a successful test claim or incorrect reduction claim ruling, the reimbursement procedure must establish that costs are recoverable in total.

2. Contractual Services -- The Controller's representative recommends restricting the reimbursement of contracted services to the cost that would have been incurred if the claims had been prepared instead by local agency employees. We object to the speculative revision. It is <u>not</u> consistent with current policies found in other mandates, it ignores qualitative realities, it seeks to substitute unknown standards for the management choices of public officials, and it will result in greater state audit costs that may spawn otherwise avoidable incorrect reduction claims in future years. Furthermore, this approach would not result in full cost recovery and, we believe, is inconsistent with the facts upon which the Commission based its decision on this test claim.

3. Training Costs -- With logic that ignores reality and which could doom the state's education system, Mr. Baldridge argues that training costs should not be allowed. Again, this is inconsistent with the procedures established for other existing mandates. Such training has been a mutually advantageous tool used by the State to clarify potential misunderstandings; thus its representatives are often present at these classes. Therefore, we would object to such a break from existing policies.

4. Claiming Costs Disclaimer -- Mr. Baldridge seeks to disallow the costs for claiming recovery under this mandate. We believe that this restruction is unclear, unnecessary, and may result in added costs greater than those it seeks to avoid.

5. Incorrect Reduction Claims -- Starting on Page 5 of Mr. Baldridge's alternative P's and G's, at least two objectionable concepts are raised. First, he states that only one employee/representative will be reimbursed for Commission appearances, even though departmental experts are often needed to explain the nature of the program costs. This would also be an unfair restriction on local agencies, for multiple state representatives are often present at such hearings. Second, his proposal for splitting costs based on the percentage of success of a claim is impractical, unrealistic, and inequitable. There is no true correlation between the costs of preparing a claim and the actual recovery. For example, some costs may be incurred regardless of the number of "parts" in a claim, e.g., the cost of an appearance before the Commission will be the same whether the claim is in one part or three. Therefore, we object to this punitive concept.

6. Other Reimbursement -- Based on the Commission's recent segregation of "offsetting cost savings" from "new revenues," the Controller's Section VIII (Page 11) may need to be revised. Further, we do not believe that reimbursement from other sources will, as a practical matter, be relevant to this claim.

MINUTES

COMMISSION ON STATE MANDATES
November 20, 1986
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

Present were: Chairperson Jesse R. Huff, Director, Department of Finance; Peter Pelkofer, Deputy State Controller; and Robert C. Creighton, Public Member. Absent was Huston T. Carlyle, Jr., Director, Office of Planning and Research.

There being a quorum present, Chairperson Huff called the meeting to order at 10:07 a.m.

Item 1 Minutes

The Commission on State Mandates considered the minutes of the September 25, 1986, hearing. Member Pelkofer moved approval of the minutes. Without objection the motion carried.

Member Aceituno, representative for the State Treasurer, arrived at the hearing.

Item 2 Test Claim
Chapter 1, Statutes of 1984, 2nd E.S.
Health Fee Elimination

Patrick Sisneros, representing Rio Hondo Community College District, stated that he agreed with the staff analysis and would stand on the record before the commission.

Member Pelkofer moved the commission find a mandate based on the staff recommendation. The motion was left to stand while the commission discussed the claim.

Chairperson Huff questioned whether in the aggregate, taking into account all funding provided in the bill, there was funding provided by the state which could or was meant to cover the lost fee revenues. He also asked whether the ADA amount for apportionment funding had increased. Staff explained that in this case no reimbursement to the claimant has occurred. Additionally, the amount of money a community college receives is not in any way based on whether or not they provide the health service program. The same formula for funding is used for all districts.

Chairperson Huff asked staff whether there was language in this statute which provides increased funds which could reimburse the claimed costs. Member Pelkofer stated his belief that whether the statute contained language to provide an offset of funds was not the question; only some districts were being required to provide this additional service and all districts receive the same funding.

Member Creighton stated the cost determination should be done on a case-by-case basis.

Chairperson Huff called for the vote on Member Pelkofer's motion to find a mandate. The vote on the motion was unanimous. The motion carried.

Item 3 Test Claim
Chapter 498, Statutes of 1983
Graduation Requirements

Mary Gleason and William Jackson of the Santa Barbara School High School District and Carol Miller of the School Services of California, Inc. appeared to speak on behalf of the Santa Barbara School High School District. Mike Ricketts of the State Department of Education also appeared.

Mary Gleason stated that SB 813 of 1983 added the new requirement for an additional science class. She stated that because of this new requirement, Santa Barbara High School needed major remodeling to accomodate the new science class. She added that that is the reason the district filed the claim.

William Jackson stated that before the SB 813 requirement there were 1023 students enrolled in 21 units of science. Due to SB 813 there are currently 1326 students enrolled in 50 units of science. He stated there has been no substantial increase in the student enrollment of the school.

Mike Ricketts stated that the State Department of Education agrees with staff's analysis.

Member Aceituno asked Jim Apps of the Department of Finance if DOF agrees that Chapter 498/83 required the addition of a science class in order to qualify a student for graduation. Mr. Apps stated that DOF agrees that an additional science class is required, but that they are not aware of a law which requires that class to be given in a science laboratory. Member Aceituno then stated that there is apparently a basic agreement that an extra science class is required but disagreement as to how to conduct the class. He further stated that he believes that would be a parameter and guideline's issue. He added that he disagrees with DOF and thinks science classes are more appropriately conducted in laboratories. He said that it would take expert educational testimony to convince him that science classes could be adequately and safely conducted in a classroom.

Member Creighton stated that his reactions to this claim are similar to those of Member Aceituno.

Member Pelkofer added that he agrees that science classes need a science lab but he is concerned because Santa Barbara has always provided science classes adequate for its students' admission to all colleges. That means, he continued, that there were, prior to enactment of Chapter 498/83, science labs operating in the the district adequate to prepare college bound students who might have chosen to take more than one science class.

William Jackson said that was a fair statement. He stated that the students who don't like science and wouldn't have chosen to take an extra science class are now compelled to take an additional science class.

Member Pelkofer asked Mr. Jackson if the length of the required school day had also increased. Mr. Jackson said it had not. He said students had one less class period available for electives.

Member Pelkofer asked Mr. Jackson if there was adequate space for students before Chapter 498/83 required the new science class. Member Pelkofer said he thought existing space might have been available which could have been refurbished as a lab at a lower cost.

Chairperson Huff stated that that would be a parameter and guideline issue. He continued by saying that SB 813/83 contained large amounts of discretionary funds. He added that funding of schools is needed; that there were large dicretionary funds included in the bill and that if school districts say to the Legislature, the money in the bill wasn't specifically earmarked for mandates contained in the bill, the Legislature may stop providing discretionary funds.

Carol Miller stated that the type of building project that was conducted by Santa Barbara High School was remodeling. There was no new construction.

Member Pelkofer stated that these would be issues for parameters and guidelines and that he agrees that schools must now do something that they weren't required to do before.

Member Creighton moved to adopt staff's recommendation to approve the mandate. The vote was Member Aceituno, aye; Member Creighton, aye; Chairperson Huff, no; Member Pelkofer, aye. The motion carried.

Item 4 Test Claim
Chapter 1609, Statutes of 1984
Chapter 668, Statutes of 1985
Domestic Violence

Madera Police Chief Gordon Skeels and Captain Andrew Moore appeared on behalf of the Madera Police Department. Sterling O'Ran of the Office of Criminal Justice Planning also appeared.

Member Pelkofer moved adoption of staff's recommendation to approve the mandate. The vote was unanimous. The motion carried.

Item 5 Proposed Parameters And Guidelines
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Member Pelkofer began the discussion by stating that he was not in agreement with the staff proposal concerning legal costs. Member Pelkofer stated that a more appropriate method would be to establish a threshold hourly rate with a statement that informs a claimant that with proper documentation, reimbursement will be made for any amounts that do not exceed the threshold hourly rate, and any amounts that exceed the threshold rate, will be subject to review by the State Controller's Office (SCO) for appropriateness. Member Pelkofer moved this amendment.

The commission then discussed the function of test claimants in assisting with the enactment of the Local Government Claims Bill. Member Pelkofer, with agreement from other members, stated that it was not appropriate to reimburse local government for assisting with the enactment of appropriation legislation. Member Pelkofer moved the deletion of this language.

Jim Apps, representing the Department of Finance (DOF), stated that after the initial claiming year, the costs for preparing a particular reimbursement claim should be included as part of each existing mandate rather than as a separate reimbursement claim filed under the provisions of this particular mandate.

Robert Eich, representing commission staff, stated that one claim should be submitted for all costs resulting from these two statutes, to be paid from the appropriation made to reimburse Chapter 486/75 and Chapter 1459/84 costs.

Glen Beatie, representing the SCO, stated that this method would be more appropriate and also facilitate the SCO's review and audit process of reimbursement claims. Member Pelkofer then moved the staff recommendation, that claimants submit one annual reimbursement claim for this mandate.

Chairperson Huff then suggested that the commission vote on the three motions already made. The vote was unanimous. The motions carried.

The commission then discussed limiting reimbursement to only successful test claims and reimbursement claims. Carol Miller, representing the Education Mandated Cost Network, stated that she did not agree with this limitation. She stated that it may act to discourage potential claimants because they fear they may not be reimbursed for the cost of presenting their claim.

Member Pelkofer stated the limitation is not meant to be punitive. However, if the commission finds that a test claim does not contain a mandate then there is no basis upon which to pay for the costs of presenting the claim. Member Aceituno stated that he agreed with this position.

Member Pelkofer moved the adoption of the staff recommendation, and that only successful claims be reimbursed. The vote on the motion was unanimous. The motion carried.

The commission then took up the issue of reimbursing contractual services. Member Pelkofer stated that the SCO is withdrawing their recommendation and concedes to the staff position.

The commission then discussed the issue of training costs. Member Pelkofer stated that the SCO is amending its recommendation to prohibit reimbursement for general meetings for local governmental representatives. Rather, reimbursement should be limited to specific training classes that are related to specific mandates. Member Aceituno agreed with this limitation.

Member Creighton suggested that language be added to Section VI E. to limit reimbursement to classes that are related to specific mandates and perhaps this would alleviate Member Pelkofer's concern.

Carol Miller then inquired whether individual training would be reimbursable when there are situations that warrant such training. Member Pelkofer replied

that he does not want to pay for individual tutorial services. He stated that although there is merit for reimbursement in certain situations, it would be too difficult for the SCO to audit and determine the appropriateness of such costs. Therefore, Member Pelkofer moved to reimburse only the cost of classes that are related to a specific reimbursable mandate. Robert Eich stated that this language would be added to Section VI E. of the parameters and guidelines.

Chairperson Huff noted that Member Pelkofer moved the adoption of the amended language.

Member Pelkofer then stated that the SCO's recommendation concerning claiming costs disclaimer, and incorrect reductions claims, are being withdrawn.

The commission then took up the issue of "other reimbursement". Member Pelkofer moved that the staff recommendation be adopted.

Member Pelkofer then moved the adoption of the parameters and guidelines with all changes and amendments as discussed by the commission. The vote on the motion was unanimous. The motion carried.

Item 6 Proposed Amendment to Parameters and Guidelines
Chapter 961, Statutes of 1975
Collective Bargaining

Chairperson Huff in response to an opinion from the commission's counsel, declared that the proposed amendment submitted by Assemblyman O'Connell was not properly before the commission. Therefore, no action was taken by the commission on the proposal.

Item 7 Statewide Cost Estimate
Chapter 498, Statutes of 1983
Certification of Teacher Evaluators' Demonstrated Competence

William A. Doyle, Director of Classified Personnel for the claimant, San Jose Unified School District and Carol Miller of School Services, Inc. appeared at the hearing. After staff's introduction of the item, Robert Eich added that staff recommends that the commission not adopt the statewide cost estimate due to the small response by school districts upon which the estimate was based. He stated that staff wanted the estimate returned for additional work, to gather more information prior to adoption by the commission.

Member Creighton moved to refer the statewide cost estimate back to staff due to insufficient data upon which the estimate was based. The vote was unanimous. The motion carried.

Item 8 Statewide Cost Estimate
Chapter 743, Statutes or 1978
Judicial Arbitration

A. B. Brand appeared on behalf of the claimant, San Bernardino County. Chairperson Huff asked staff if there was any controversy regarding this item. Staff responded that there was no apparent controversy. Member Aceituno moved adoption of staff's statewide cost estimate. The vote was unanimous. The motion carried.

Item 9 Proposed Cost Estimate
Chapter 1018, Statutes of 1979
Superior Court Judgeship

The representative for the claimant did not appear, and there was no discussion. Member Aceituno moved the commission adopt staff's proposed cost estimate. The vote was unanimous. The motion carried.

Item 10 Statement of Decision
Chapter 566, Statutes of 1974
Patient Aftercare Plans

Member Pelkofer moved the adoption of the proposed Statement of Decision. The vote on the motion was unanimous. The motion carried.

Item 11 Statement of Decision
Chapter 818, Statutes of 1985
Water Analysis Plans

Michael Sexton appeared on behalf of the claimant, Solano Irrigation District. Mr. Sexton stated that following the August, 1986 hearing during which the commission denied this claim he received a draft proposed statement of decision from commission staff with which he took issue by his October, 1986 letter to staff.

Mr. Sexton said that the proposed statement of decision states in Item 4 that Government Code Section 17566 constitutes a Legislative interpretation of when mandated costs are not reimbursable and that it is consistent with California Constitution Article XIII B (6). He stated that he takes issue with that finding and doesn't believe the commission "found any such thing". He believes that the commission shied away from the constitutionality issue.

Member Pelkofer asked staff if the proposed statement of decision was prepared in conjunction with the transcript from the hearing on the claim and also in conjunction with commission counsel. Staff responded that it was. Robert Eich stated that counsel had reviewed the proposed statement and that the proposed statement of decision does not say that the commission found Government Code Section 17566 to be constitutional. He said that the Legislature, by enacting the law establishing the commission, stated it is constitutional.

Member Aceituno stated that we are bound to approach this as if the section is constitutional because we are required by other articles of the Constitution to do that which, he added, the commission did. He added that the commission cannot do otherwise. Member Aceituno asked Mr. Sexton for his suggested language for the section. Mr. Sexton replied that he did not have any suggested language. Mr. Sexton said that he would want a statement somewhere in the decision that "but for" the proscription of that Government Code costs would be reimbursed to the Solano Irrigation District. Member Aceituno stated that a statement that a statute is consistent with the Constitution is not really a finding of fact but a determination of law. For that purpose, he added, he would support taking it out of the Finding of Fact portion of the proposed statement of decision. Mr. Sexton stated that he would agree with that action.

Mr. Sexton stated that the second item he took issue with is under the determination of issues at Issue 4. Issue 4 states that Solano Irrigation District has asserted that it can fix and collect charges for services furnished by the district. He stated that the points and authorities that were submitted with the test claim and which were discussed at the last hearing state that the assertion that the district can fix and collect charges for services is a conclusion of law. The statement that the district can do so was made during the investigation of the claim by an individual who was not in a position to make such a statement. Therefore, he added, he does not like the statement.

Mr. Sexton added that he does not mind the reliance on Section 22280 of the Water Code which appears in the proposed statement of decision. Mr. Sexton said that it is not the position of the district with respect to this claim that it can fix and collect fees. The commission directed staff to delete Item Number 4 under Determination of Issues.

Mr. Sexton stated that the final change he wants is the "clean up" the findings to clarify that a mandate does exist and "but for" the proscription of Government Code Section 17556 (a) (4) that the cost would be reimbursed to the district. And, he added, he wants language like the "but for" language discussed earlier. He continued by saying that Section 6 under Determination of Issues doesn't do that and there is no claim that it does do that. He said he is asking the commission not to "shy away" from the subject.

After discussion, Member Aceituno stated that he is unwilling to go so far as to say but for the language of Government Code Section 17556 the commission would have found reimbursable costs. He said that it is correct to state that the commission denied the claim because of Government Code Section 17556.

Member Pelkofer suggested that the commission adopt the language as proposed by staff including the amendments as agreed to, because he is convinced that it is the appropriate language for the statement of decision. The vote was Member Aceituno, aye; Member Creighton, aye; Chairperson Huff, abstain; Member Pelkofer, aye. The motion carried.

Item 12 Amended Deficiency Appropriation

There were no appearances on this item and no discussion. Member Pelkofer moved the commission adopt staff's recommendation. The vote was unanimous, and the motion carried.

Item 13 1987 Hearing Date List

Member Creighton requested the August hearing date be changed from August 27, 1987, to August 20, 1987. The commission agreed to the change, and unanimously approved the proposed hearing schedule.

Item 14 Regulations

Member Pelkofer asked commission staff to work with staff of his office to include proposed language to the administrative regulations regarding review of the State Controller's Office's Claiming Instructions. He asked that the

regulations require the claimant to have attempted a resolution with the State Controller's Office prior to having the commission become involved. Staff stated that language of this nature would be included. Member Aceituno asked staff to proceed with publication of the Notice of Proposed Regulation Change.

With no further items on the agenda, Chairperson Huff adjourned the hearing at 11:28 a.m.

ROBERT W. EICH
Executive Director

WP:dp:1512A

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
March 26, 1987
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

A. ROLL CALL

B. MINUTES

Item 1 Hearing of February 26, 1987

C. PARAMETERS AND GUIDELINES

Item 2 Chapter 1111, Statutes of 1985
Missing Persons Report

Item 3 Chapter 1490, Statutes of 1985
Business Tax Reporting Requirements

D. PARAMETER AND GUIDELINE AMENDMENTS

Item 4 Title 14, CAC, Section 17141
Solid Waste Management

Item 5 Chapter 486, Statutes of 1975 &
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Item 6 Chapter 1264, Statutes of 1980
PERS Retirement

Item 7 Chapter 1568, Statutes of 1984
Firefighters Cancer Presumption

E. STATEMENTS OF DECISION

Item 8 Chapter 846, Statutes of 1981
Residential Development Review

Item 9 Chapter 961, Statutes of 1975
Collective Bargaining

F. EXECUTIVE SESSION

- Personnel
- Litigation

Note: All back-up material and supporting documentation for this meeting is available for public inspection at the office of the Commission on State Mandates, 1130 K Street, Suite LL-50, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP 1562A

ITEM 5

PROPOSED PARAMETER AND GUIDELINE AMENDMENTS
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

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Hearing: 3/26/87
File Number: CSM-4204
Staff: Stephen Lehman
WP 0033s

Proposed Amendment to Parameters and Guidelines
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

EXECUTIVE SUMMARY

This proposed amendment to parameters and guidelines is being presented at the suggestion of the commission's counsel. Currently, these parameters and guidelines allow a claimant to be reimbursed for court responses and court attorney fees. According to the commission's counsel, the recovery of court responses, and attorney fees, are covered by the Code of Civil Procedure and the Government Code. Therefore, it would be inappropriate to provide recovery beyond that which is provided in the Code of Civil Procedure and Government Code.

Staff proposes to delete the language that allows reimbursement for court responses and substitute language that allows reimbursement of those same costs of an unsuccessful test claim if an adverse commission ruling is later reversed by a court order. To date, staff is unaware of any opposition to this amendment. Therefore, we recommend the parameters and guidelines be amended.

Claimant

County of Fresno

Chronology

11/27/85	Claim filed with the Commission on State Mandates (CSM).
3/27/86	CSM approves test claim.
4/24/86	CSM adopts Statement of Decision.
6/23/86	Claimant submits proposed parameters and guidelines.
9/17/86	Claim continued from 9/25/86 hearing to 11/30/86 hearing by mutual agreement between staff and claimant.
11/30/87	CSM adopts parameters and guidelines.

Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for costs mandated by the State.

Departmental Recommendations

Staff did not receive any written recommendations at the time this analysis was written. However, in telephone conversations with the Department of Finance, the State Controller's Office, and the claimant, staff was informed that these parties did not oppose the suggested amendment.

Staff Analysis

Staff is proposing that Section V.B. of the parameters and guidelines, Reimbursable Costs, be amended by removing the language which reads ". . . including court responses, if an adverse Commission ruling is later reversed." and substituting it with language that reads ". . . including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order." This amendment is being proposed at the request of the Commission's counsel because the recovery of court responses and attorney fees are covered by the Code of Civil Procedure and certain sections of the Government Code. Therefore, it would be inappropriate to provide recovery beyond that which is provided in the Code of Civil Procedure and Government Code.

The parameters and guidelines, as currently written, allow a claimant to be reimbursed for all costs incurred in preparing and presenting a successful test claim, including court responses if an adverse commission ruling is later reversed by a court. According to the commission's counsel, this provision of the parameters and guidelines would allow reimbursement of court responses and attorney fees that are in excess of those allowed by the Code of Civil Procedure, Sections 1021-1038, as well as Government Code Section 800. Consequently, if this provision is left in the parameters and guidelines, the Commission will have assumed authority which it does not properly possess.

In order to rectify this situation, staff recommends that Section V.B. of the parameters and guidelines be amended to read as follows:

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, ~~including court responses, if an adverse Commission ruling is later reversed~~ including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Under this amendment, a test claimant would be able to recover its test claim preparation and presentation costs after an adverse ruling is overturned by a court order, and the cost of the litigation would be covered by Sections 1021-1038 of the Code of Civil Procedure, and Government Code Section 800.

As stated earlier, staff has been informed by the DOF, the SCO, and the claimant, that they are not opposed to the amendment.

Staff Recommendation

Staff recommends the commission amend the parameters and guidelines as proposed by staff.

Adopted: 11/20/86

Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d) (3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs--both direct and indirect--are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities--Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, ~~including court responses. If an adverse Commission ruling is later reversed~~ including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities - Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

WP 1422A

State of California

Memorandum

RECEIVED
FEB 27 1987
COMMISSION ON
STATE MANDATES

CSM Attachment A

Department of Justice

To : Steve Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, LL50
Sacramento, California 95814

Date : February 25, 1987

File No.:

Telephone: ATSS (8) 454-5469
(916) 324-5469

From : Carol Hunter
Deputy Attorney General
Office of the Attorney General—Sacramento

Subject : Court Costs/Attorney's Fees in Litigation

Judicial review of a Commission decision is authorized by Government Code section 17626. The review is in accordance with Code of Civil Procedure section 1094.5 (copy attached). Section 1094.5(a) provides that the cost of the record is recoverable as a cost of suit by the prevailing party. The procedures for a prevailing party to recover appropriate costs of litigation are set forth in Code of Civil Procedure sections 1021 - 1038 (copies attached). The most important sections for your purposes are 1032, 1033, and 1033.5.

Attorney's fees are provided for in Government Code section 800 (copy attached).

There are provisions for recovery of costs on appeal which are contained in California Rules of Court, Rule 26 (copy attached).

Also enclosed is an excerpt from Chapter 7, CEB California Administrative Mandamus, 1985, pages 102 - 108 which provides some background on costs and attorney's fees.

Carol Hunter

CAROL HUNTER
Deputy Attorney General

CH:mb

Enclosures

petition or where no record of a proceeding is required, the respondent shall answer or otherwise respond within 30 days after service of the petition. However, where a record of the proceeding to be reviewed has been requested pursuant to Section 11523 of the Government Code, or otherwise, and has not been filed with the petition, the party upon whom the petition has been served, including any real party in interest, shall answer or otherwise respond within 30 days following receipt of a copy of the record. *(Added by Stats. 1982, c. 193, § 2. Amended by Stats. 1983, c. 818, § 2.)*

§ 1090. Jury trial; discretion; order for trial

If a return be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him. *(Enacted 1872. Amended by Stats. 1971, c. 1475, § 4.)*

Cross References

New trial proceedings, see § 1110.
Practice in proceeding, see § 1109.
Trial by jury, in general, see § 600 et seq.

§ 1091. Return; objection to sufficiency; countervailing by proof

On the trial, the applicant is not precluded by the return from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance. *(Enacted 1872. Amended by Stats. 1971, c. 1475, § 5.)*

Cross References

Demurrer, in general, see § 430.10 et seq.
New trial in proceeding, see § 1110.
Practice in proceeding, see § 1109.

§ 1092. Motion for new trial; court in which made

Motion for new trial, where made. The motion for new trial must be made in the Court in which the issue of fact is tried. *(Enacted 1872.)*

Cross References

Applicability of other sections to new trials, see § 1110.
New trials in civil actions, in general, see § 655 et seq.

§ 1093. Transmission of verdict; argument on application; notice

The clerk must transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion. If no notice of a motion for a new trial be given, or if given, the motion be denied, the Clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the Court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party. *(Enacted 1872.)*

Cross References

Rules of practice, see § 1109.
Verdicts, in general, see § 624 et seq.

§ 1094. Hearing

If no return be made, the case may be heard on the papers of the applicant. If the return raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

If a petition for a writ of mandate filed pursuant to Section 1088.5 presents no triable issue of fact or is based solely on an administrative record, the matter may be determined by the court by noticed motion of any party for a judgment on the peremptory writ. *(Enacted 1872. Amended by Code Am. 1873–74, c. 383, § 144; Stats. 1971, c. 1475, § 6; Stats. 1982, c. 193, § 3.)*

Cross References

Hearing on application, see § 1088.
Jury trial, see § 1090.
Return and hearing thereon, see § 1108.

§ 1094.5. Review of administrative orders or decisions; filing record; extent of inquiry; abuse of discretion; relevant evidence; judgment; stay

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discre-

tion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the provisions of the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency which issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in

effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings. *(Added by Stats. 1945, c. 868, § 1. Amended by Stats. 1949, c. 358, § 1; Stats. 1974, c. 668, § 1; Stats. 1975, 2nd Ex.Sess., c. 1, § 26.5; Stats. 1978, c. 1348, § 1; Stats. 1979, c. 199, § 1; Stats. 1982, c. 193, § 4; Stats. 1982, c. 812, § 3; Stats. 1985, c. 324, § 1.)*

Cross References

California coastal commission, writs of mandate in accordance with this section, see Public Resources Code §§ 30801, 30802.

Civil service proceedings, failure to apply for rehearing, see Government Code § 19588.

Energy conservation and development, writ of mandate for review, see Public Resources Code § 25901.

Judicial review of administrative adjudication, see Government Code § 11523.

Life care contracts, refusal by state department to release lien, see Health and Safety Code § 1772.

Medical practice act, action when school not approved or applicant rejected, see Business and Professions Code § 2087.

Public services, decision of director of state department of social services affecting rights of applicants or recipients, see Welfare and Institutions Code § 10962.

Stay on review of proceeding for writ, see § 1110b.

Suisun marsh preservation, decisions or actions by San Francisco Bay Conservation and Development Commission, see Public Resources Code §§ 29602, 29603.

§ 1094.6. Judicial review; decisions of local agencies; petition; filing; time; record; decision and party defined; ordinance or resolution

(a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is made. If there is such provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 90 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall be applicable to a local agency only if the governing board thereof adopts an ordinance or resolution making this section applicable. If such ordinance or resolution is adopted, the provisions of this section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply. *(Added by Stats. 1976, c. 276, § 1. Amended by Stats. 1983, c. 818, § 3.)*

§ 1095. Judgment for applicant; damages; peremptory writ; officer of public entity as respondent

If judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and a peremptory mandate must also be awarded without delay. Damages and costs may be enforced in the manner provided for money judgments generally. In all cases where the respondent is an officer of a public entity, all damages and costs, or either, which

Section
1030. Security for costs and attorney's fees; motion; hearing; undertaking.
1031. Actions for recovery of wages for labor performed.
1031.5. Repealed.
1032. Prevailing party in any action or proceeding; stipulation to alternative procedures.
1032a, 1032b. Renumbered.
1032.5 to 1032.8. Repealed.
1033. Judgments that could have been rendered in courts of lesser jurisdiction; costs or claimed costs.
1033½. Repealed.
1033.5. Items allowable.
1033.7. Repealed.
1034. Prejudgment costs; appeal costs.
1034½. Repealed.
1034.5. Unlawful detainer; request for expenses required for eviction.
1035. Repealed.
1036. Inverse condemnation proceedings.
1037. Repealed.
1038. Proceedings under tort claims act or for indemnity or contribution; motions for summary judgment, judgment before presentation of defense evidence; directed verdict, or nonsuit; good faith; award of defense costs; waiver of malicious prosecution damages.
1039. Repealed.

Cross References

Agreed case, costs, see § 1139.
Appeal,
Costs upon frivolous appeal or appeal taken solely for delay, see § 907.
Entry of judgment for costs on appeal, see California Rules of Court, Rule 26.
Items recoverable as costs on appeal, see California Rules of Court, Rule 26.
Prevailing party entitled to his costs on appeal as incident to judgment on appeal, see California Rules of Court, Rule 26.
Appeal made for delay, costs, see § 907.
Appeals from municipal and justice courts in civil cases,
Entry of judgment for costs, see California Rules of Court, Rule 135.
Items recoverable as costs, see California Rules of Court, Rule 135.
Right to costs, see California Rules of Court, Rule 135.
Stay of enforcement of money judgment, inclusion of costs in determining amount of undertaking, see § 917.1.
Consolidation of actions, costs, see Civil Code §§ 3149, 3150.
Continuance following amendment of pleading or proceeding, costs, see §§ 469, 470, 472, 473.
Default judgment, costs, see § 585.
Dismissal of action, costs, see § 581.
Federal courts, taxation of costs, see Federal Rules of Civil Procedure Rule 54, 28 U.S.C.A.
Fees of expert witnesses as costs, see Evidence Code § 733.
Fees of interpreters and translators as costs, see Government Code § 68092.
Fees of reporters as costs, see Government Code §§ 69953, 70051, 74520.
Interpretation of an indemnity against costs, see Civil Code § 2778.
Items recoverable as costs on appeal, see California Rules of Court, Rule 26(c).
Notice of motion to tax costs,
Municipal courts, see California Rules of Court, Rule 503.
Superior courts, see California Rules of Court, Rule 203.
Offer to compromise, costs, see § 998.
Prevailing party entitled to his costs on appeal as incident to judgment on appeal, see California Rules of Court, Rule 26.
Sham and irrelevant answers and allegations, stricken on terms imposed by court, see § 436.
State as not liable for costs, see Government Code § 16051.
Transferred cases, costs, see § 399.
Venue, costs on change of venue, see §§ 394, 399.

§ 1021. Attorney's fees; determination by agreement; right to costs

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided. *(Enacted 1872. Amended by Stats.1933, c. 744, § 180; Stats.1986, c. 377, § 2.)*

Cross References

Action for contribution by co-owner of conduit, well, or pumping plant, counsel fees, see Water Code § 7003.
Actions for wages in municipal and justice courts, attorneys' fees, see § 1031.
Change or substitution of counsel in contingent fee cases, see § 284.
Claim of executor or administrator against estate, see Probate Code § 703.
Commercial paper, effect of provisions for payment of costs of collection or attorney's fee, see Commercial Code § 3106.
Contract actions, award of attorney's fees and costs, see Civil Code § 1717.
Contribution of expenses of jointly used wells, pumping plants or conduits, attorney's fees, see Water Code § 7003.
Dissolution of marriage actions, costs and attorneys' fees, see Civil Code §§ 4370, 4371.
Divorce, see Civil Code §§ 4370, 4371, 4380.
Divorce actions, costs and attorneys' fees, see Civil Code §§ 4370, 4371.
Eminent domain,
Attorney's fees recoverable upon abandonment of proceeding, see § 1268.610.
Escheat proceedings in decedents' estates, costs, including attorney's fees, see § 1423.
Escheated property actions, see Government Code § 12543.
Executor or administrator, see Probate Code §§ 910, 911.
Executors and administrators, actions on claims against estate, attorneys' fees, see Probate Code § 703.
Foreclosure of mortgages, counsel fees, see § 726; Probate Code § 716.
Foreclosure proceedings, see §§ 726, 730; Civil Code § 2924; Probate Code § 716.
Improvers of property owned by another, recovery by owner of attorney fees, see § 871.5.
Injunction, recovery of attorney's fees, see § 532.
Injunction restraining diversion, diminution or increase in flow of waters; application to dissolve or modify; attorneys' fees, see § 532.
Interment, action to compel, see Health and Safety Code § 7109.
Litigation for benefit of property being partitioned, see § 874.010, 874.020.
Mechanics liens, foreclosure, see Civil Code § 3150.
Order allowing attorney's fee in probate proceeding, appealability, see Probate Code § 1240.
Partition proceedings, interest on disbursements, see § 874.030.
Partition, see Probate Code § 1105.
Costs and counsel fees, see §§ 874.010, 874.020, 874.040.
Interest on disbursements, see § 874.030.
Probate proceedings, attorneys' fees, see Probate Code §§ 910, 911.
Small claims court appeals, see § 116 et seq.
Special administrator, see Probate Code §§ 467 to 469.
Wage claims under $300, see § 1031.
Workmen's compensation, see Labor Code §§ 3709, 3856, 3861, 4555, 4903, 4906.

§ 1021.4. Attorney's fees; action for damages arising from felony offense

In an action for damages against a defendant based upon that defendant's commission of a felony offense for which that defendant has been convicted, the court may, upon motion, award reasonable attorney's fees to a prevailing plaintiff against the defendant who has been convicted of the felony. *(Added by Stats.1983, c. 938, § 3.)*

§ 1021.5. Attorney fees; enforcement of important rights affecting public interest

Upon motion, a court may award attorney's fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an

important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor. *(Added by Stats. 1977, c. 1197, § 1.)*

§ 1021.6. Attorneys' fees; implied indemnity; prevailing party; conditions

Upon motion, a court after reviewing the evidence in the principal case may award attorney's fees to a person who prevails on a claim for implied indemnity if the court finds (a) that the indemnitee through the tort of the indemnitor has been required to act in the protection of the indemnitee's interest by bringing an action against or defending an action by a third person and (b) if that indemnitor was properly notified of the demand to bring the action or provide the defense and did not avail itself of the opportunity to do so, and (c) that the trier of fact determined that the indemnitee was without fault in the principal case which is the basis for the action in indemnity or that the indemnitee had a final judgment entered in his or her favor granting a summary judgment, a nonsuit, or a directed verdict. *(Added by Stats. 1979, c. 289, § 1. Amended by Stats. 1982, c. 1383, § 1.)*

§ 1021.7. Attorney fees; actions against peace officers; actions for libel or slander; award to defendant where action not filed in good faith

In any action for damages arising out of the performance of a peace officer's duties, brought against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or against a public entity employing a peace officer or in an action for libel or slander brought pursuant to Section 45 or 46 of the Civil Code, the court may, in its discretion, award reasonable attorney's fees to the defendant or defendants as part of the costs, upon a finding by the court that the action was not filed or maintained in good faith and with reasonable cause. *(Added by Stats. 1981, c. 980, § 1.)*

§ 1021.9. Attorneys' fees; damages from trespass

In any action to recover damages to personal or real property resulting from trespassing on lands either under cultivation or intended or used for the raising of livestock, the prevailing plaintiff shall be entitled to reasonable attorney's fees in addition to other costs, and in addition to any liability for damages imposed by law. *(Added by Stats. 1986, c. 1381, § 1.)*

§ 1022. Multiple actions where defendants could have been joined in one action; disallowance of costs; allowance of disbursements

When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were, at the commencement of the previous action, openly within this State; but the disbursements of the plaintiff must be allowed to him in each action. *(Formerly § 1023, enacted 1872. Renumbered § 1022 and amended by Stats. 1933, c. 744, § 181.)*

Cross References

Defect or misjoinder of parties as ground for demurrer to complaint, see §§ 430.10, 430.30, 430.40.
Joinder of defendants in civil actions, see § 379.

§ 1023. Referees' fees

The fees of referees are such reasonable sum as the court may fix for the time spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rates shall be allowed. *(Formerly § 1028, enacted 1872. Renumbered § 1023 and amended by Stats. 1933, c. 744, § 182; Stats. 1953, c. 795, § 1.)*

Cross References

Partition proceedings, expenses and fees of referees, see § 874.010.
Probate proceedings, referees' fees, see Probate Code §§ 718, 927.
References and trials by referees, see § 638 et seq.

§ 1024. Continuance; expenses as condition

When an application is made to the court or referee to postpone a trial, the payment of the expenses occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same. *(Formerly § 1029, enacted 1872. Renumbered § 1024 and amended by Stats. 1933, c. 744, § 183; Stats. 1986, c. 377, § 3.)*

Cross References

Postponements in civil actions, see §§ 594a to 596.

§ 1025. Defendant's tender before action; deposit in court; award of costs

When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for plaintiff, the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant. *(Formerly § 1030, enacted 1872. Renumbered § 1025 and amended by Stats. 1933, c. 744, § 184.)*

Cross References

Objections to tender, see § 2076.
Offer of defendant to compromise, effect on allowance of costs, see § 998.
Offer of judgment as means of precluding award of costs, see Code of Civil Procedure § 998; Federal Rules of Civil Procedure, Rule 68, U.S.C.A.

§ 1026. Actions by or against fiduciaries, etc.; payment of costs

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense. *(Formerly § 1031, enacted 1872. Renumbered § 1026 and amended by Stats. 1933, c. 744, § 185.)*

Cross References

Discretion to order costs paid by parties or estate, see Probate Code § 1232.

Executor's and administrator's liability for costs, indemnification, see Probate Code § 719.

§ 1027. Review other than by appeal; allowance on collection of costs

When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs must be allowed as in cases on appeal, and may be collected in the manner provided for enforcement of money judgments generally, or in such manner as the court may direct, according to the nature of the case. *(Formerly § 1032, enacted 1872. Renumbered § 1027 and amended by Stats. 1933, c. 744, § 186; Stats. 1982, c. 497, § 68.)*

Cross References

Mandamus, recovery of costs, see § 1095.

Special proceeding, defined, see § 23.

Special proceedings of a civil nature, see § 1063 et seq.

§ 1028. Award against state; payment from agency appropriation

Notwithstanding any other provisions of law, when the State is a party, costs shall be awarded against it on the same basis as against any other party and, when awarded, must be paid out of the appropriation for the support of the agency on whose behalf the State appeared. *(Formerly § 1038, enacted 1872. Renumbered § 1028 and amended by Stats. 1933, c. 744, § 187; Stats. 1943, c. 165, § 1.)*

Cross References

Claims against state, no costs, see Government Code § 16051.

§ 1028.5. Award against state regulatory agency in favor of small business or licensee; action without substantial justification; litigation expenses; short title

(a) In any civil action between a small business or a licensee and a state regulatory agency, involving the regulatory functions of a state agency as applied to a small business or a licensee, if the small business or licensee prevails, and if the court determines that the action of the agency was undertaken without substantial justification, the small business or licensee may, in the discretion of the court, be awarded reasonable litigation expenses in addition to other costs. Funds for such expenses and costs shall be paid from funds in the regular operating budget of the state regulatory agency where the appropriation therefor encompasses the payment of such cost and expenses, and not from unappropriated money in the General Fund.

(b) "Reasonable litigation expenses" means any expenses not in excess of seven thousand five hundred dollars ($7,500) which the judge finds were reasonably incurred in opposing the agency action, including court costs, expenses incurred in administrative proceedings, attorney's fees, witness fees of all necessary witnesses, and such other expenses as were reasonably incurred.

(c) "Small business" means a business activity that is all of the following:

(1) Independently owned and operated.

(2) Not dominant in its field of operation.

(3) Not exceeding the following annual gross receipts or other criteria in the categories of:

(A) Agriculture, one million dollars ($1,000,000).

(B) General construction, nine million five hundred thousand dollars ($9,500,000).

(C) Special trade construction, five million dollars ($5,000,000).

(D) Retail trade, two million dollars ($2,000,000).

(E) Wholesale trade, nine million five hundred thousand dollars ($9,500,000).

(F) Services, two million dollars ($2,000,000).

(G) Transportation and warehousing, one million five hundred thousand dollars ($1,500,000).

(H) A manufacturing enterprise not exceeding 250 employees.

(I) A health care facility not exceeding 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

(J) Generating and transmitting electric power not exceeding 4,500 megawatt hours annually.

(d) "Licensee" means any person licensed by a state agency who does not qualify as a small business, but whose annual gross receipts from the use of such license do not exceed one million dollars ($1,000,000).

(e) A small business or a licensee shall be deemed to prevail in any action in which there is no adjudication, stipulation, or acceptance of liability on the part of the small business or licensee.

(f) A small business or licensee shall not be deemed to have prevailed in actions commenced at the instance of, or on the basis of a complaint filed by, a person who is not an officer, employee, or other agent of the state regulatory agency if the action is dismissed by the agency upon a finding of no cause for the action, or is settled by the agency and small business or licensee without a finding of fault.

(g) Section 800 of the Government Code shall not apply to actions which are subject to the provisions of this section.

(h) Every state regulatory agency against which litigation expenses have been awarded under this section shall, at the time of submission of its proposed budget pursuant to Section 13320 of the Government Code, submit a report to the Department of Finance and the Legislature as to the amount of those expenses awarded and paid during the fiscal year.

(i) This section shall be known and may be cited as the Carpenter-Katz Small Business Equal Access to Justice Act of 1981. *(Added by Acts 1981, c. 814, § 1. Amended by Stats. 1983, c. 445, § 1.)*

§ 1029. Award against county, city, district, or other public agencies, etc.; payment

When any county, city, district, or other public agency or entity, or any officer thereof in his official capacity, is a party, costs shall be awarded against it on the same basis as against any other party and, when awarded, must be paid out of the treasury thereof. *(Formerly § 1039, enacted 1872. Renumbered § 1029 and amended by Stats. 1933, c. 744, § 188; Stats. 1945, c. 217, § 1.)*

Cross References

Mandamus, recovery or award of costs against county or municipality, see § 1095.

Prohibition, recovery or award of costs against county or municipality, see §§ 1095, 1105.

§ 1029.5. Complaint for damages against architect, engineer, etc.; order to file undertaking

(a) Whenever a complaint for damages is filed against any architect, landscape architect, engineer, building designer, or land surveyor, duly licensed as such under the laws of this state, in an action for error, omission, or professional negligence in the creation and preparation of plans, specifications, designs, reports or surveys which are the basis for work performed or agreed to be performed on real property, any such defendant may, within 30 days after service of summons, move the court for an order, upon notice and hearing, requiring the plaintiff to file an undertaking in a sum not to exceed five hundred dollars ($500) as security for the costs of defense as provided in subdivision (d), which may be awarded against the plaintiff. The motion shall be supported by affidavit showing that the claim against the defendant is frivolous.

At the hearing upon the motion, the court shall order the plaintiff to file the undertaking if the defendant shows to the satisfaction of the court that (i) the plaintiff would not suffer undue economic hardship in filing the undertaking, and (ii) there is no reasonable possibility that the plaintiff has a cause of action against each named defendant with respect to whom the plaintiff would otherwise be required to file the undertaking. No appeal shall be taken from any order made pursuant to this subdivision to file or not to file the undertaking.

A determination by the court that the undertaking either shall or shall not be filed or shall be filed as to one or more defendants and not as to others, shall not be deemed a determination of any one or more issues in the action or of the merits thereof. If the court, upon any such motion, makes a determination that an undertaking be filed by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the undertaking required by the court has been filed within such reasonable time as may be fixed by the court.

(b) This section does not apply to a complaint for bodily injury or for wrongful death, nor to an action commenced in a small claims court.

(c) Whenever more than one such defendant is named, the undertaking shall be increased to the extent of not to exceed five hundred dollars ($500) for each additional defendant in whose favor the undertaking is ordered not to exceed the total of three thousand dollars ($3,000).

(d) In any action requiring an undertaking as provided in this section, upon the dismissal of the action or the award of judgment to the defendant, the court shall require the plaintiff to pay the defendant's costs of defense authorized by law. Any sureties shall be liable for such costs in an amount not to exceed the sum of five hundred dollars ($500) or the amount of the undertaking, whichever is lesser, for each defendant with respect to whom the sureties have executed an undertaking. *merly § 405.7, added by Stats. 1967, c. 393, § 1. Re[illegible] bered § 1029.5 and amended by Stats. 1969, c. 1610, § 6; Stats. 1980, c. 114, § 2; Stats. 1982, c. 517, § 162.)*

Effect of Stats. 1982, c. 517, see note under § 166.

§ 1029.6. Complaint for damages against physician, surgeon, etc.; order for undertaking by plaintiff; joinder; hearing; costs; summary judgment

(a) Whenever a complaint for damages for personal injuries is filed against a physician and surgeon, dentist, registered nurse, dispensing optician, optometrist, pharmacist, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital as the employer of any such person, in an action for error, omission, or negligence in the performance of professional services, or performance of professional services without consent, any such defendant may, within six months after service of summons, move the court for an order, upon notice to plaintiff and all defendants having appeared in the action, and hearing, requiring the plaintiff to file an undertaking in a sum not to exceed five hundred dollars ($500) as security for the costs of defense as provided in subdivision (d), which may be awarded against the plaintiff. The motion shall be supported by affidavit showing that the claim against the defendant is frivolous. Any defendant having appeared in the action and within 30 days after receipt of notice may join with the moving party requesti[illegible] an order under this section as to such additional de[illegible]t. The failure of any defendant to join with the moving party shall preclude each such defendant from subsequently requesting an order under this section.

At the hearing upon the motion, the court shall order the plaintiff to file the undertaking if the defendant shows to the satisfaction of the court that: (i) the plaintiff would not suffer undue economic hardship in filing the undertaking and (ii) there is no reasonable possibility that the plaintiff has a cause of action against each named defendant with respect to whom the plaintiff would otherwise be required to file the undertaking.

A determination by the court that an undertaking either shall or shall not be filed or shall be filed as to one or more defendants and not as to others, shall not be deemed a determination of any one or more issues in the action or of the merits thereof. If the court, upon any such motion, makes a determination that an undertaking be filed by the plaintiff as to any one or more defendants, the action shall be dismissed as to such defendant or defendants, unless the undertaking required by the court shall have been filed within such reasonable time as may be fixed by the court.

(b) This section does not apply to a complaint in an action commenced in a small claims court.

(c) Whenever more than one such defendant is named, the undertaking shall be increased to the extent of not to exceed five hundred dollars ($500) for each additional defendant in whose favor the undertaking is ordered, not to exceed the total of one thousand dollars ($1,000).

(d) In any action requiring an undertaking as provided in this section, upon the dismissal of the action or the award of judgment to the defendant, the court shall require the plaintiff to pay the defendant's court costs. Any sureties shall be liable for such costs in an amount not to exceed the sum of five hundred dollars ($500) or the amount of the undertaking, whichever is lesser, for each defendant with respect to whom the sureties have executed an undertaking. If the plaintiff prevails in the action against any defendant with respect to whom an undertaking has been filed, the defendant shall pay the costs to plaintiff incurred in defending the motion for dismissal authorized by this section.

(e) Any defendant filing a motion under this section or joining with a moving party under this section is precluded from subsequently filing a motion for summary judgment.

(f) Any defendant filing a motion for summary judgment is precluded from subsequently filing a motion, or joining with a moving party, under this section. *(Formerly § 405.8, added by Stats.1969, c. 608, § 1. Renumbered § 1029.6 and amended by Stats.1970, c. 910, § 1; Stats.1972, c. 653, § 1; Stats.1980, c. 114, § 3; Stats. 1982, c. 517, § 163.)*

Effect of Stats.1982, c. 517, see note under § 166.

§ 1029.8. Unlicensed persons who cause injury or damage to another person as result of providing goods or performing services for which a license is required; award of treble damages, attorney's fees, and costs; application of section

(a) Any unlicensed person who causes injury or damage to another person as a result of providing goods or performing services for which a license is required under Division 2 (commencing with Section 500) or any initiative act referred to therein, Division 3 (commencing with Section 5000), or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8, of the Business and Professions Code, shall be liable to the injured person for treble the amount of damages assessed in a civil action in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney's fees to the injured person if that person prevails in the action.

(b) This section shall not be construed to confer an additional cause of action or to affect or limit any other remedy, including, but not limited to, a claim for exemplary damages.

(c) The additional damages provided for in subdivision (a) shall not exceed ten thousand dollars ($10,000).

(d) For the purposes of this section, the term "unlicensed person" shall not apply to any of the following:

(1) Any person, partnership, corporation, or other entity providing goods or services under the good faith belief that they are properly licensed and acting within the proper scope of that licensure.

(2) Any person, partnership, corporation, or other entity whose license has expired for nonpayment of license renewal fees, but who is eligible to renew that license without the necessity of applying and qualifying for an original license.

(3) Any person, partnership, or corporation licensed under Chapter 6 (commencing with Section 2700) or Chapter 6.5 (commencing with Section 2840) of the Business and Professions Code, who provides professional nursing services under an existing license, if the action arises from a claim that the licensee exceeded the scope of practice authorized by his or her license.

(e) This section shall not apply to any action for unfair trade practices brought against an unlicensed person under Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, by a person who holds a license which is required, or closely related to the license which is required, to engage in those activities performed by the unlicensed person. *(Added by Stats.1985, c. 895, § 1.)*

§ 1030. Security for costs and attorney's fees; motion; hearing; undertaking

(a) When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.

(b) The motion shall be made on the grounds that the plaintiff resides out of the state or is a foreign corporation

and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding. The motion shall be accompanied by an affidavit in support of the grounds for the motion and by a memorandum of points and authorities. The affidavit shall set forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding.

(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees.

(d) The plaintiff shall file the undertaking not later than 30 days after service of the court's order requiring it or within a greater time allowed by the court. If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made.

(e) If the defendant's motion for an order requiring an undertaking is filed not later than 30 days after service of summons on the defendant, no pleading need be filed by the defendant and all further proceedings are stayed until 10 days after the motion is denied or, if granted, until 10 days after the required undertaking has been filed and the defendant has been served with a copy of the undertaking. If the defendant's motion for an order requiring an undertaking is filed later than 30 days after service of summons on the defendant, if the defendant objects to the undertaking, the court may in its discretion stay the proceedings not longer than 10 days after a sufficient undertaking has been filed and the defendant has been served with a copy of the undertaking.

(f) The determinations of the court under this section have no effect on the determination of any issues on the merits of the action or special proceeding and may not be given in evidence nor referred to in the trial of the action or proceeding.

(g) An order granting or denying a motion for an undertaking under this section is not appealable. *(Formerly § 1036, enacted 1872. Renumbered § 1030 and amended by Stats.1933, c. 744, § 189; Stats.1951, c. 1737, § 137; Stats.1980, c. 114, § 4; Stats.1982, c. 517, § 164.)*

Effect of Stats.1982, c. 517, see note under § 166.

Cross References

Bonds and undertakings, see §§ 1054, 1055.

§ 1031. Actions for recovery of wages for labor performed

In actions for the recovery of wages for labor performed, where the amount of the demand, exclusive of interest, does not exceed three hundred dollars ($300), the court shall add, as part of the cost, in any judgment recovered by the plaintiff or cross-complainant, an attorney's fee not exceeding 20 percent of the amount recovered. *(Added by Stats.1933, c. 744, § 190. Amended by Stats.1939, c. 647, § 1; Stats.1945, c. 1149, § 1; Stats.1951, c. 1737, § 138; Stats.1968, c. 71, § 1; Stats.1973, c. 818, § 1; Stats.1986, c. 377, § 4.)*

Cross References

Rejection of compromise offer, see § 998.
Withholding or augmenting costs following rejection or acceptance of offer to allow judgment, see § 998.

§ 1031.5. Repealed by Stats.1979, c. 746, § 1, operative Jan. 1, 1983

§ 1032. Prevailing party in any action or proceeding; stipulation to alternative procedures

(a) As used in this section, unless the context clearly requires otherwise:

(1) "Complaint" includes a cross-complaint.

(2) "Defendant" includes a cross-defendant or a person against whom a complaint is filed.

(3) "Plaintiff" includes a cross-complainant or a party who files a complaint in intervention.

(4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against the defendant. When any party recovers other than m tary relief and in situations other than as specified, "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

(c) Nothing in this section shall prohibit parties from stipulating to alternative procedures for awarding costs in the litigation pursuant to rules adopted under Section 1034. *(Added by Stats.1986, c. 377, § 6.)*

Former § 1032 was repealed by Stats.1986, c. 377, § 5.

Cross References

Dissenting shareholders' actions, apportionment of costs, see Corporations Code § 1305.
Indemnification of costs, see Civil Code § 2778.
Partition costs and expenses, see § 874.010 et seq.
Taxation of fees of superior court reporters as costs, see Government Code § 69956.

§ 1032a. Renumbered § 1032.7 and amended by Stats.1982, c. 1354, § 2

§ 1032b. Renumbered § 1032.8 and amended by Stats.1982, c. 1354, § 3

§ 1032.5. Repealed by Stats.1986, c. 377, §

See, now, § 1033.5.

§ 1032.6. Repealed by Stats.1982, c. 497, § 69, operative July 1, 1983

See, now, § 685.040.

§§ 1032.7, 1032.8. Repealed by Stats.1986, c. 377, §§ 8, 9

See, now, § 1033.5.

§ 1033. Judgments that could have been rendered in courts of lesser jurisdiction; costs or claimed costs

Costs or any portion of claimed costs shall be as determined by the court in its discretion in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a court of lesser jurisdiction. *(Added by Stats.1986, c. 377, § 11.)*

Former § 1033 was repealed by Stats.1986, c. 377, § 10.

§ 1033½. Repealed by Stats.1986, c. 377, § 12

§ 1033.5. Items allowable

(a) The following items are allowable as costs under Section 1032:

(1) Filing, motion, and jury fees.

(2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.

(3) Taking, videotaping, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stake out or other means employed in locating the person to be served, unless such charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for such service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.

(9) Transcripts of court proceedings ordered by the court.

(10) Attorney fees authorized by statute, assessed upon motion or on default judgment.

(11) Court reporters fees as established by statute.

(12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(13) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) Any award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are within the ambit of paragraph (10) of subdivision (a). *(Added by Stats.1986, c. 377, § 13.)*

§ 1033.7. Repealed by Stats.1982, c. 497, § 70, operative July 1, 1983

See, now § 685.010 et seq.

§ 1034. Prejudgment costs; appeal costs

(a) Prejudgment costs allowable under this chapter shall be claimed and contested in accordance with rules adopted by the Judicial Council.

(b) The Judicial Council shall establish by rule allowable costs on appeal and the procedure for claiming those costs. *(Added by Stats.1986, c. 377, § 15.)*

Former § 1034 was repealed by Stats.1986, c. 377, § 14.

§ 1034½. Repealed by Stats.1967, c. 1600, § 1

See, now, § 1034.5.

§ 1034.5. Unlawful detainer; request for expenses required for eviction

In unlawful detainer proceedings, the plaintiff who recovers judgment for possession of premises, and who advances or pays to the sheriff or marshal the expenses required for the eviction of any persons in possession or occupancy of the premises and the personal property of such persons, shall, after being advised by the sheriff or marshal of the exact amount necessarily used and expended to effect the eviction, be allowed to file a request for the same pursuant to rules adopted by the Judicial Council. *(Added by Stats.1968, c. 102, § 1. Amended by Stats.1970, c. 602, § 3; Stats.1982, c. 497, § 72; Stats.1986, c. 377, § 16.)*

Cross References

Costs in unlawful detainer proceedings, see §§ 1169, 1174.
Summary proceedings for possession of realty, see § 1159 et seq.

§ 1035. Repealed by Stats.1982, c. 517, § 165

§ 1036. Inverse condemnation proceedings

In any inverse condemnation proceeding brought for the taking of any interest in real property, the court rendering judgment for the plaintiff by awarding compensation for such taking, or the attorney representing the public entity who effects a settlement of such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. *(Added by Stats.1975, c. 1240, § 8.)*

Former § 1036 was Repealed by Stats.1933, c. 744, § 198.

Cross References

Eminent domain law, see § 1230.010 et seq.

§ 1037. Repealed by Stats.1986, c. 377, § 17

§ 1038. Proceedings under tort claims act or for indemnity or contribution; motions for summary judgment, judgment before presentation of defense evidence; directed verdict, or nonsuit; good faith; award of defense costs; waiver of malicious prosecution damages

(a) In any civil proceeding under the California Tort Claims Act or for express or implied indemnity or for contribution in any civil action, the court, upon motion of the defendant or cross-defendant, shall, at the time of the granting of any summary judgment, motion for directed verdict, motion for judgment under Section 631.8, or any nonsuit dismissing the moving party other than the plaintiff, petitioner, cross-complainant, or intervenor, or at a later time set forth by rule of the Judicial Council adopted under Section 1034 determine whether or not the plaintiff, petitioner, cross-complainant, or intervenor brought the proceeding with reasonable cause and in the good faith belief that there was a justiciable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party.

(b) "Defense costs," as used in this section, shall include reasonable attorneys' fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding.

(c) This section shall be applicable only on motion made prior to the discharge of the jury or entry of judgment, and any party requesting the relief pursuant to this section waives any right to seek damages for malicious prosecution. Failure to make such motion shall not be deemed a waiver of the right to pursue a malicious prosecution action.

(d) This section shall only apply if the defendant or cross-defendant has made a motion for summary judgment, judgment under Section 631.8, directed verdict, or nonsuit and the motion is granted. *(Added by Stats. 1980, c. 1209, § 1. Amended by Stats.1986, c. 377, § 18.)*

Former § 1038 was renumbered § 1028 and amended by Stats.1933, c. 744, § 187.

§ 1039. Repealed by Stats.1986, c. 377, § 19

Former § 1039 was renumbered § 1029 and amended by Stats.1933, c. 744, § 188.

CHAPTER 7. GENERAL PROVISIONS

Section

1041 to 1044. Repealed.
1045. Lost pleadings or papers; use of copy.
1046. Affidavits, notices, etc., without title of action or with defective title; validity.
1046a. Public records lost or destroyed in calamity; nunc pro tunc filing; effect.
1047. Successive actions on same contract or transaction.
1048. Consolidation and severance of actions.
1049. Pending action defined.
1050. Rights of action; determination of adverse claims; surety to compel satisfaction of debt.
1051. Repealed.
1052. Municipal and justice court clerks; register of civil actions; entries.
1052.5. Alternative methods of keeping register of actions.
1053. Referees; meeting; acts by majority.
1054. Extension of time; court order; stipulation.
1054a. Repealed.
1054.1. Extension of time; attorney member of legislature.
1055. Action against officer or person holding bond or covenant of indemnity; defense by persons executing bond or covenant; judgment.
1056 to 1059. Repealed.

DIVISION 3.5

Costs in Civil Actions Resulting From Administrative Proceedings

[Added by Stats 1971 ch 1655 § 1.]

Former Division 3.5, consisting of §§ 600–803, was added by Stats 1959 ch 1724 § 1 and repealed by Stats 1963 ch 1715 § 6.

§ 800. Costs of suit challenging administrative action

In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the State Board of Control, where it is shown that the award, finding, or other determination of such proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his official capacity, the complainant if he prevails in the civil action may collect reasonable attorney's fees, but not to exceed one thousand five hundred dollars ($1,500), where he is personally obligated to pay such fees, from such public entity, in addition to any other relief granted or other costs awarded.

This section is ancillary only, and shall not be construed to create a new cause of action.

Refusal by a public entity or officer thereof to admit liability pursuant to a contract of insurance shall not be considered arbitrary or capricious action or conduct within the meaning of this section.

Added Stats 1971 ch 1655 § 1.

Former Section: Former § 800, incorporated in present §§ 950–950.8, was added by Stats 1959 ch 1724 § 1 and repealed by Stats 1963 ch 1715 § 6.

Collateral References:

Witkin Procedure 2d Judgment § 127A.
Cal Jur 3d Administrative Law § 316.
Cal Practice Rev Ch 52 Costs and Attorneys' Fees.

NOTES OF DECISIONS

1. In General; Scope of Statute
2. Arbitrary or Capricious Action
3. Procedure

1. In General; Scope of Statute

Gov Code, § 800, providing for the allowance of attorney fees in civil actions to review arbitrary

(d) [Recall of remittitur] A remittitur may be recalled by order of the reviewing court on its own motion, on motion or petition after notice supported by affidavits, or on stipulation setting forth facts which would justify the granting of a motion.

(e) Forthwith upon issuance of the remittitur, the clerk of the reviewing court shall mail notice to the parties that it has been issued.

As amended, eff. Jan. 1, 1951; Jan. 1, 1957; Jan. 1, 1961; Nov. 11, 1966; Jan. 1, 1980; July 1, 1980; July 1, 1984; May 6, 1985.

Draftsman's Explanatory Notes

(a) [Issuance and transmission] Supersedes C.C.P. 53, last sentence, C.C.P. 958, in part, P.C. 1264, and former Sup.Ct. Rules XXXIV, XXI. Cross-reference: Rule 26(b), entry of costs in remittitur. This rule restates existing law and practice, but adds a clarifying provision stating when the remittitur takes effect to revest jurisdiction in the lower court.

(b) [Issuance forthwith]; (c) [Stay of issuance]; (d) [Recall of remittitur] New. Cross-reference: Rule 26(b), recall of remittitur to enter judgment for costs. These rules state existing law and practice on inherent powers of the court.

Rule 26. Costs on appeal

(a) [Right to costs] Except as provided in this rule, the prevailing party shall be entitled to costs on appeal as an incident to the judgment on appeal. In the case of a general and unqualified affirmance of the judgment, or the dismissal of an appeal, the respondent shall be deemed the prevailing party; in the case of a reversal, in whole or in part, or of a modification of the judgment, the appellant shall be deemed the prevailing party. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs it deems proper. In probate cases, in the absence of an express direction for costs by the reviewing court, costs on appeal shall be awarded to the prevailing party, but the superior court shall decide against whom the award shall be made. The foregoing provisions do not apply in criminal cases. Where the appeal is frivolous or taken solely for the purpose of delay or where any party has required in the typewritten or printed record on appeal the inclusion of any matter not reasonably material to the determination of the appeal, or has been guilty of any other unreasonable infraction of the rules governing appeals, the reviewing court may impose upon offending attorneys or parties such penalties, including the withholding or imposing of costs, as the circumstances of the case and the discouragement of like conduct in the future may require.

If there is more than one notice of appeal or if the judgment of the trial court is reversed in whole or in part, or modified, the opinion shall specify the award or denial of costs.

(b) [Entry of judgment for costs] In any case in which the reviewing court directs the manner in which costs shall be awarded or denied, the clerk shall enter on the record and insert in the remittitur a judgment in accordance with such directions. In the absence of such directions by the reviewing court the clerk shall enter on the record and insert in the remittitur a judgment for costs as follows: (1) in the case of a general and unqualified affirmance of the judgment, for the respondent; (2) in the case of a dismissal of the appeal, for the respondent; (3) in the case of a modification of the judgment, for the appellant; and (4) in the case of a reversal of the judgment, in whole or in part, with or without directions, for the appellant. In any case where the clerk fails to enter judgment for costs as provided in this subdivision, the reviewing court, on motion made not later than 30 days after issuance of the remittitur, or on its own motion, may recall it for correction.

(c) [Items recoverable as costs] The party to whom costs are awarded may recover only the following, when actually incurred: (1) the cost of preparation of an original and one copy of any type of record on appeal authorized by these rules if he is the appellant, or one copy of such record if he is the respondent, subject to reduction by order of the reviewing court pursuant to subdivision (a) of this rule; provided, however, that the expense of any method of preparation in excess of the cost of preparing such record in typewriting shall not be recoverable as costs, unless the parties so stipulate, and provided, further, that the expense of copying exhibits and affidavits under rule 5(b), or of copying parts of a prior record which could be incorporated by reference under rule 11(b), shall not be recoverable as costs unless such copying is ordered by the reviewing court; (2) the reasonable cost of printing or reproduction of briefs by other process of duplication; (3) the cost of production of additional evidence; (4) filing and notary fees and expense of service, transmission and filing of the record, briefs and other papers; and (5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary.

(d) [Procedure for claiming costs] A party who claims costs awarded by a reviewing court shall, within 30 days after the remittitur is filed with the trial court, serve and file in the trial court a memorandum of costs verified as prescribed by rule 870(a)(1).

A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 870(b). After the costs have been taxed, or

after the time for taxing the costs has expired, the award of costs may be enforced in the same manner as a money judgment.

As amended, eff. Jan. 1, 1951; Jan. 1, 1959; July 1, 1968; July 1, 1986; Jan. 1, 1987.

Draftsman's Explanatory Notes

(a) [Right to costs] Supersedes C.C.P. 957, last sentence, C.C.P. 1034, in part, Prob.C. 1232, and former Sup.Ct. Rule XXIII, in part. Cross-reference: C.C.P. 1027, costs on review other than by appeal. Cf. Fed. Rule 75(e). (1) In the main this rule attempts to state and clarify existing practice, recognizing the power of the court, notwithstanding C.C.P. 1034, to exercise discretion in changing the normal award of costs. The provision on costs in probate appeals is an attempt to modify what seems to be an undesirable interpretation of Prob.C. 1232, namely, that the probate court has complete freedom in making the award. The new rule provides that the prevailing party normally *receives* costs, as in other cases, but that the probate court may determine whether the estate, the representative, or an heir or distributee should be *liable* therefor. (2) The provision for penalty for including unnecessary matter in the record, imposed upon either parties or attorneys, is taken from Fed. Rule 75(e). Some matters are omitted from the transcript unless requested (Rule 4(a)), and the parties may use a partial reporter's transcript (Rule 4(b)), a partial or designated clerk's transcript (Rules 5(a), 5(b)), or a settled statement (Rule 7), being protected by a presumption that the record contains all relevant matters (Rule 52). However, either party may have the complete record brought up (Rules 4(a), 4(b), 5(a), 5(b)), and the penalty would only be appropriate where this privilege was seriously abused.

(b) [Entry of judgment for costs] Supersedes former Sup.Ct. Rule XXIII, in part, and states existing practice.

(c) [Items recoverable as costs] Supersedes C.C.P. 1034, in part, and former Sup.Ct. Rule XI, in part. Cross-references: Rules 4(d), 5(d), 6(a), requiring additional copy of record. This rule states existing law, except that (1) since records need not be printed, no extra award of costs can be had to compensate for such printing, and (2) the cost of both required copies of the record is recoverable.

Rule 27. Rehearing in Court Rendering Decision

(a) [Power to grant rehearing] The Supreme Court or a Court of Appeal may grant a rehearing after its own decision in any cause except the denial by a Court of Appeal of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause or the denial of a transfer to a Court of Appeal in a case within the original jurisdiction of a municipal or justice court. A rehearing may be granted on petition, as provided in subdivision (b), or on the court's own motion before the decision becomes final.

(b) [Time for filing petition] A party seeking a rehearing either in the Court of Appeal or in the Supreme Court must serve and file a petition therefor within 15 days after the filing of the decision.

(c) [Time for filing answer] An answer may be served and filed within 23 days after the filing of the decision.

(d) [Form of petition and answer] Insofar as practicable, the petition and answer shall conform to the provisions of rule 15.

(e) [Determination of petition] An order of the Supreme Court granting a rehearing shall be signed by at least four judges assenting thereto, and filed with the clerk. If no order is made before the decision becomes final as provided in subdivision (a) of rule 24, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect.

As amended, eff. Jan. 1, 1957; Jan. 1, 1961; Jan. 2, 1962; Nov. 11, 1966; July 1, 1984.

Draftsman's Explanatory Notes

(a) [Power to grant rehearing] Supersedes former Sup.Ct. Rule XXX, § 1, in part, and states existing law. Cross-references: Const. art. VI, §§ 2, 4c [amended 1956], on power to grant rehearings; Rule 24(a), when decision becomes final.

(b) [Time for filing petition] Supersedes former Sup.Ct. Rule XXX, §§ 1, 4, in part. Cross-references: Rule 24(a), decisions filed with clerk; Rule 16(b), number of copies of briefs; Rule 45(c), no extension of time by C.J. or P.J. The total time allowed for granting a rehearing is limited by the Constitution (see Rule 24(a)). The former rule gave 20 days (civil) and 10 days (criminal) for filing the petition; the result was that the time allowed for answer and determination was so short as to preclude adequate consideration of the answer. The new rule cuts the time for the petition to 15 days (civil) and 8 days (criminal) and thereby enlarges the time for answer and determination from 10 days to 15 days in civil cases, and from 5 days to 7 days in criminal cases [For changes made by the 1957 amendment, see Historical Note, post].

(c) [Time for filing answer] Supersedes former Sup.Ct. Rule XXX, §§ 1, 4, in part. Cross-reference: Rule 45(c), no extension of time. This rule allows the same number of days for filing the answer as before, but states the time more clearly by specifying the number of days after filing of the decision, instead of the number of days before the decision becomes final [For changes made by the 1957 amendment, see Historical Note, post.]

(d) [Form of petition and answer] Supersedes, in part, former Sup.Ct. Rules VIII, § 2,

ESTIMATING THE COSTS

[§7.5] Fees for Filing

Since the Book was published, the basic filing fees have been increased. Government Code §26821.2 has been repealed. The board of supervisors of each county may now fix the filing fee up to a maximum of $86 when a fee is collected for the court reporter fund, or $61 if it is not. Govt C §26820.4. Before filing, counsel should ascertain the total filing fee for the county in which the pleadings will be filed.

The fee to issue a peremptory writ of mandate is now $3.50. Govt C §26828.

Government Code §6103 was amended in 1978 to exempt state and local public agencies from having to pay court reporter fees and to provide for the recovery of those fees as costs under Govt C §6103.5.

The California Courts Directory and Fee Schedule is available from:
Association of Municipal Court Clerks
P.O. Box 460
Bellflower, CA 90706

[§7.6] Fees for Service of Documents

Former CCP §410.1, providing for allowance of fees for private process servers, was repealed in 1969. A similar provision now appears in CCP §1032.8.

The fee for service of documents by a constable, sheriff, or marshal is now $14. Govt C §26721.

Former Govt C §26746, providing for mileage fees, has been repealed.

[§7.7] Preparation of Administrative Record

The fee for the original copy of a transcript was increased in 1980 to 60 cents per 100 words; the cost for a copy to the party buying the original is still ten cents per 100 words. The cost of the first copy to any other person is 20 cents per 100 words. Govt C §69950.

[§7.8] Attorneys' Fees

On attorneys' fees in administrative proceedings, see California Attorneys' Fees Award Practice §§2.2, 2.4, 8.9 (Cal CEB 1982).

When estimating his time, counsel should realize that time spent in actual court appearances is relatively small compared to time he must spend doing necessary research and preparation of trial memoranda. See Supp §13.1A.

In 1971, Govt C §800 was enacted, providing that in a civil action to appeal or review the award, finding, or other determination of an administrative proceeding under the Government Code or any other state law,

reasonable attorneys' fees not to exceed $1500 may be recovered by the complainant in certain circumstances. Government Code §800 does not apply to actions of the State Board of Control or to the refusal of a public entity or officer to admit liability under a contract of insurance.

It is clear that Govt C §800 applies to the type of administrative adjudicatory action subject to review under CCP §1094.5. Government Code §800 applies to any determination made under the Administrative Procedure Act (Govt C §§11370–11528) because the act is contained in the Government Code. It also applies to all state-level agencies of legislative origin because their decisions presumably are made "under any other provision of state law," as that terminology is used in Govt C §800. Likewise, constitutional agencies can be said to be making decisions under state law.

It is not clear whether Govt C §800 applies to nonadjudicatory agency actions that are ministerial (§2.20) or discretionary (Supp §2.10A). See *Wilkerson v City of Placentia* (1981) 118 CA3d 435, 444, 173 CR 294, 299 (mandamus to compel city to pay back wages for period of wrongful discharge; Govt C §800 inapplicable); compare *A.B.C. Fed'n of Teachers v A.B.C. Unified School Dist.* (1977) 75 CA3d 332, 342, 142 CR 111, 117 (ordinary mandamus to compel ministerial duty to pay teacher stipend; Govt C §800 fees allowed). See generally Comment, *Government Code 800 Reimbursement of Counsel Fees,* 1 Pepperdine L Rev 287 (1974); and Opinion of Legis. Counsel, No. 15138, July 18, 1972, cited in that Comment.

Government Code §800 does not apply to purely legislative functions such as enactment of ordinances or regulations. *Reeves v City of Burbank* (1979) 94 CA3d 770, 777, 156 CR 667, 670. In two cases dealing with the invalidity of a legislative enactment, however, §800 formed the basis, at least in part, for recovery of attorneys' fees. In *Reeves,* recovery was allowed a petititioner who was improperly denied a relocation permit because of improper conduct of local officials and the later adoption of an invalid ordinance. 94 CA3d at 778, 156 CR at 671. The court did state that if the sole issue is the enactment of legislation, no attorneys' fees are recoverable under §800. 94 CA3d at 777, 156 CR at 670. In *Verdugo Hills Hosp., Inc. v Department of Health* (1979) 88 CA3d 957, 964, 152 CR 263, 267, attorneys' fees were awarded to a petitioner who was denied an exemption by the agency, which relied on a patently invalid regulation. Perhaps the underlying rationale of these cases is that mere enactment of an invalid regulation or ordinance does not itself invoke Govt C §800, but the agency's reliance on such an enactment in making an order in an adjudicatory proceeding (*e.g.*, denial of a permit or disciplinary action) may make Govt C §800 applicable in judicial review of that order.

Decisions of local agencies and officials fall under Govt C §800 if the action is taken under the Government Code or any other state law. *Olson v Hickman* (1972) 25 CA3d 920, 923, 102 CR 248, 250. See also *Redondo Beach Police Officers Ass'n v City of Redondo Beach* (1977) 68 CA3d

595, 597, 137 CR 384, 385 (city refused to recognize bargaining unit; award of attorneys' fees under Govt C §800 upheld without comment).

When an agency's or official's decision is made under the Government Code or other state law, attorneys' fees may be awarded only if all of the following conditions are met:

(1) *The complainant prevails in the CCP §1094.5 action.* The complainant prevails if the trial court or appellate court, in its usual review function, determines that a peremptory writ of mandate should be granted against the agency or official under one of the grounds in CCP §1094.5(b), ranging from an improper refusal to grant a continuance of the administrative hearing to the more basic issues of whether the findings are supported by the weight of the evidence or by substantial evidence, or whether the penalty imposed by the agency constitutes a clear abuse of discretion.

(2) *The complainant proves he is personally obligated to pay the attorneys' fees.* This requirement can be met by making an appropriate allegation in the petition for writ of mandamus. For form of allegation, see Supp §9.35A. If the allegation is denied, petitioner can testify to prove these facts when appropriate at the trial.

(3) *The complainant shows that the administrative determination was the result of arbitrary or capricious action of the agency or an officer of the entity acting in his official capacity.* A showing that the agency or official made a prejudicial error (*e.g.*, the trial court's determination on reweighing conflicting evidence that the agency's findings are unsupported by the evidence) is not sufficient. What constitutes arbitrary or capricious conduct depends on the circumstances of each case, *e.g.*, if an agency revokes a license for a very minor infraction and reasonable minds would conclude that, even reviewing in the light most favorable to the agency, the penalty is greatly excessive. Another example is the agency's willful discrimination against petitioner without any excuse or justification. The court in *Madonna v County of San Luis Obispo* (1974) 39 CA3d 57, 61, 113 CR 916, 919, upheld the trial court's award of attorneys' fees to the plaintiff, saying "[t]he phrase 'arbitrary or capricious' has no precise meaning, and the code [Govt C §800] does not undertake to define it. However, conduct not supported by a fair or substantial reason may be categorized as arbitrary and capricious. . . ." See *Midstate Theatres, Inc. v Board of Supervisors* (1975) 46 CA3d 204, 211, 119 CR 894, 899 (stubborn insistence on following unauthorized course of action). Arbitrary or capricious conduct does not require showing that the agency action was based on ulterior or improper motives. *A.B.C. Fed'n of Teachers v A.B.C. Unified School Dist.* (1977) 75 CA3d 332, 343, 142 CR 111, 117 (school board's discontinuing payment of extra pay stipend held arbitrary and capricious; law supporting claim was well established and had been clearly demonstrated to agency); *Verdugo Hills Hosp., Inc. v Department of Health* (1979) 88 CA3d 957, 964, 152 CR 263, 267 (agency's reliance without any apparent reason on patently invalid regulation in denying ex-

emption). The conduct need not be illegal to be arbitrary or capricious. *Amador Valley Secondary Educ. Ass'n v Newlin* (1979) 88 CA3d 254, 258, 151 CR 724, 727 (improper documents put in employee personnel file; refusal to allow employee to review and comment on that reprimand). Whether it is arbitrary or capricious is a question of fact for the trial court to decide and, absent an abuse of discretion, that decision will not be disturbed on appeal.

Counsel should not assume, however, that every prejudicial error warranting a peremptory writ of mandamus under CCP §1094.5 will support the trial court's determination. See *Gassman v Governing Bd.* (1976) 18 C3d 137, 148, 133 CR 1, 8 (staff counsel's reliance on an appellate decision not disapproved at the time was not arbitrary or capricious); *Granes v Commission on Professional Competence* (1976) 63 CA3d 970, 977 n5, 134 CR 71, 74 n5 (hearing officer's participation in decision after his resignation not arbitrary or capricious); *Von Durjais v Board of Trustees* (1978) 83 CA3d 681, 688, 148 CR 192, 196 (bona fide dispute over right to salary during suspension; board did not act arbitrarily or in bad faith); *Adler v Los Angeles Unified School Dist.* (1979) 98 CA3d 280, 290, 159 CR 528, 533 (denial of grievance hearing was wrong but was not wholly arbitrary or capricious, because the employee had already submitted his resignation).

In determining whether an agency or official acted arbitrarily or capriciously, it is not clear whether the court is confined to the record of administrative proceedings or may take evidence on the issue. It is doubtful the legislature intended that the trial court hold a trial de novo and take evidence on the issue, however, because this might result in reopening and relitigating the entire case. If this interpretation of legislative intent is correct, the court would base its determination on the administrative record and any relevant evidence that could not have been produced through due diligence or that was improperly excluded at the administrative hearing. CCP §1094.5(d). Thus, the issue of arbitrary or capricious conduct must be raised as early as possible at the administrative level to preserve it for judicial review. See §§6.2–6.11. The alleged arbitrary or capricious act, however, may lie in a decision of which the complainant is not aware at the administrative hearing, *e.g.*, the agency's changing the hearing officer's findings without reviewing the record. The issue then should be raised in a petition for reconsideration. See §6.9.

Troublesome questions, both substantive and procedural, arise when an alleged arbitrary or capricious act is committed by a subordinate of a commission or board. Is the agency liable if it had no knowledge of the conduct? Should the employee be named as a respondent in the petition for administrative mandamus? Was the employee an officer acting in his official capacity within the meaning of Govt C §800? When a hearing officer of the Office of Administrative Hearings hears a case for an agency and makes a proposed decision, is he considered an officer of the agency acting

in his official capacity? If the hearing officer's proposed decision is the result of arbitrary or capricious conduct on his part, should he be named a respondent?

The answer to these questions probably is that the agency or public entity making the decision is liable for acts of its employees who are probably officers within the meaning of Govt C §800. Presumably the agency also is liable for the hearing officer's acts, because the agency has delegated its hearing functions to him. Note that Govt C §800 provides that attorneys' fees may be collected from the public entity, but does not mention collecting these fees from an officer of the agency. Therefore, petitioner should name only the respondent agency that normally would be named the respondent in the CCP §1094.5 proceeding, not an employee or hearing officer. See §9.12.

Attorneys' fees may be recovered both for prosecuting CCP §1094.5 proceedings at the trial court level and filing or defending appellate proceedings connected with it. See *Olson v Hickman* (1972) 25 CA3d 920, 102 CR 248. Government Code §800 specifies, however, that the maximum fee recoverable by one complainant, regardless of whether appellate proceedings are involved, is $1500. A petitioner prevailing in a CCP §1094.5 action at the trial court level who is awarded $1500 in attorneys' fees cannot obtain additional fees if the case is appealed, even if the appeal is defended successfully. If the appellate court reverses the trial court on the merits of the case, the award of attorneys' fees is nullified. If petitioner does not prevail in the trial court but does prevail on appeal, however, the appellate court could award petitioner attorneys' fees if it determines the agency's action was arbitrary or capricious. The appellate court also could allow the trial court to determine this issue in a new trial.

Although a number of procedural questions must be considered, some not readily answerable, it is clear from the express terms of Govt C §800 that the statute is ancillary only and does not create a new cause of action. Thus, whether attorneys' fees should be awarded in a CCP §1094.5 proceeding is for the court in that proceeding to decide. The petition for writ of mandamus should contain an allegation sufficient to put the respondent and the court on notice that attorneys' fees are being claimed, and should state the factual basis for the claim; see *Rutherford v Board of Trustees of Bellflower Unified School District* (1974) 37 CA3d 775, 782, 112 CR 560, 564, in which the court observed that the petition for mandate alleged neither arbitrary nor capricious conduct, nor that petitioners were personally obligated to pay attorneys' fees, and that the trial court's denial of attorneys' fees was not error in the absence of a record establishing a basis for the award. See form in Supp §9.35A. Similarly, the trial court should make a finding of fact on the issue so the matter may be properly reviewed if an appeal is taken.

Unless this issue is properly raised and decided during the proceeding, the court lacks authority to determine the issue after the judgment becomes final, because its function is then limited to determining the reasonableness of the attorneys' fees. *Plumbing, Heating & Piping Employers Council v Quillin* (1976) 64 CA3d 215, 225, 134 CR 332, 338. The judgment (see Book §14.8) also should specify the amount of attorneys' fees recoverable. If the litigant has properly raised the issue and has met all the requirements of Govt C §800, the award of reasonable attorneys' fees is mandatory, despite the word "may" in that statute. 64 CA3d at 224, 134 CR at 337.

As Book §7.8 indicates, in public assistance benefits cases (*e.g.*, aid to families with dependent children), Welf & I C §10962 provides that a prevailing applicant or recipient in a CCP §1094.5 proceeding is entitled to reasonable attorneys' fees and costs. For discussion of awarding these fees to public-financed legal services organizations, and standards for fixing amounts, see *Hypolite v Carleson* (1975) 52 CA3d 566, 125 CR 221, and cases cited.

If the court finds a state or local agency violated the Public Meetings Law (Govt C §§11120–11131), separate statutory provisions enacted in 1975 authorize reasonable attorneys' fees to plaintiff. Govt C §§11130.5 (state agencies), 54960.5 (local agencies). The same statutes allow the governmental agency to recover reasonable attorneys' fees if the court finds the action was clearly frivolous and without merit.

Attorneys' fees also may be awarded under the substantial benefit doctrine. This concept was codified by enactment of CCP §1021.5 in 1977. Under this statute, attorneys' fees may be awarded to the successful party in any action that results in enforcement of an important right affecting the public interest, provided significant benefit is conferred on the general public or on a large class of persons and the necessary financial burden of private enforcement makes the award appropriate. In the interest of justice these fees should not be paid out of the recovery. See generally *Woodland Hills Residents Ass'n v City Council* (1979) 23 C3d 917, 154 CR 503 (discussion on rehearing did not address fees issue), and *Northington v Davis* (1979) 23 C3d 955, 154 CR 524; compare *Bruno v Bell* (1979) 91 CA3d 776, 154 CR 435 (attorneys' fees denied).

Attorneys' fees might also be awarded under the federal Civil Rights Attorneys' Fees Awards Act of 1976 (42 USC §1988). *Filipino Accountants' Assoc., Inc. v State Bd. of Accounting* (1984) 155 CA3d 1023, 204 CR 913. Counsel also should consider whether the mandate proceeding may

Counsel also should consider whether the mandate proceeding may qualify petitioner for attorneys' fees under the private attorney general theory. See *Serrano v Priest* (1977) 20 C3d 25, 141 CR 315, and *Woodland Hills, supra*, and *Northington, supra*.

[§7.8A] Attorneys' Fees—Nongovernmental Entities

It is doubtful whether a prevailing petitioner in a CCP §1094.5 action against a nongovernmental entity (*e.g.*, a private hospital) is entitled to attorneys' fees even if that entity's action was arbitrary and capricious. Government Code §800 refers to "arbitrary or capricious action or conduct by a public entity or an officer thereof," apparently restricting recovery to actions against governmental entities and officers. Section 800 was enacted in 1971, however, well before the supreme court's decision in *Anton v San Antonio Community Hosp.* (1977) 19 C3d 802, 815, 140 CR 442, 449 (see Supp §2.10D) holding that CCP §1094.5 applies to nongovernmental entities.

[§7.10] WEIGHING THE INTANGIBLES

The Office of Administrative Procedure is now known as the Office of Administrative Hearings (Govt C §11370.2) and is located at 717 K Street, Suite 409, Sacramento 95814; 314 West First Street, Los Angeles 90012; and 455 Golden Gate Avenue, Room 2248, San Francisco 94102.

The Administrative Law Bulletin is no longer published.

MINUTES

COMMISSION ON STATE MANDATES
March 26, 1987
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

Present were: Chairperson Jesse R. Huff, Director, Department of Finance; Peter Pelkofer, Deputy State Controller; Huston T. Carlyle, Jr., Director, Office of Planning and Research; Thomas A. Aceituno, representative for the State Treasurer; and Robert C. Creighton, Public Member.

There being a quorum present, Chairperson Huff called the meeting to order at 10:15 a.m.

Item 1 Minutes

The Commission on State Mandates considered the minutes of the February 26, 1987, hearing. Member Creighton moved approval of the minutes. Without objection, the motion carried.

Item 2 Test Claim
Chapter 1111, Statutes of 1985
Missing Persons Report

This item was continued with the agreement of all parties involved.

Item 3 Parameters and Guidelines
Chapter 1490, Statutes of 1985
Business Tax Reporting Requirements

The proposed parameters and guidelines for this approved mandate were continued until the status of the administrative regulations of the Franchise Tax Board, upon which the proposed parameters and guidelines are based, is resolved.

Item 4 Proposed Amendment To Parameters And Guidelines
Title 14, CAC, Section 17141
Solid Waste Management Plans

A. B. Brand, representing the County of San Bernardino, noted that Title 14, CAC, Section 17141, was a funded mandate until January 1, 1983, when Chapter 1488, Statutes of 1982, became effective. Mr. Brand stated that although Chapter 1488/82 allowed the county to collect a fee to pay for the cost of revising their solid waste management plan, the county should be reimbursed for the costs they have incurred because the exclusion to reimbursement found in Government Code Section 17556(d) is not found in Article XIII B of the Constitution. Therefore, Government Code Section 17556(d) should be ignored because it conflicts with the Constitution.

Mr. Brand acknowledged that the county currently collects fees and assessments to pay for their solid waste management program. However, Mr. Brand stated that the county is unable to charge any additional fees, because to do so would result in an increase in illegal dumping, and the cost of increased enforcement would be prohibitive.

Several Commission members then inquired of Mr. Brand of the county's ability to collect a fee or assessment to pay for the program, and whether this fee would be significant. Mr. Brand acknowledged that the county has the authority to collect a fee and/or assessment to pay for the program, and that this fee would not require a significant increase in the current fee that is being collected. However, Mr. Brand stated that the size of the fee should not be an issue as Section 17556(d) of the Government Code is contrary to the provisions of the Constitution.

Member Aceituno moved to deny the claimant's request to amend the parameters and guidelines. The vote on the motion was unanimous. The motion carried.

Item 5 Proposed Amendment To Parameters And Guidelines
Chapter 486, Statutes of 1975;
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Member Pelkofer stated that after a review of the proposed amendment, it would appear that the amendment proposed by staff would severely limit the amount of reimbursement a claimant could receive if it went to court and successfully overturned an adverse commission ruling. Carol Hunter, commission counsel, explained that the amendment would bring the parameters and guidelines into compliance with those requirements that other agencies must adhere to. Ms. Hunter stated that reimbursement of those costs that relate to court actions are governed by the Code of Civil Procedure and Government Code Section 800, and specifically, Government Code Section 800 permits reimbursement of attorney fees only when the commission has been found to have acted in an arbitrary and/or capricious manner.

Member Pelkofer stated that the commission's process was different in that this process has been found to be a mandate, and therefore, it would appear that the claimant should be reimbursed for its entire cost of preparing and presenting a successful test claim. Member Pelkofer noted his surprise on the lack of opposition to the proposed amendment considering the severe impact it would have on the amount of reimbursement a claimant could receive.

Carol Miller, representing the Education Mandated Cost Network, and William Carnazzo, representing the City of Sacramento, both stated they were unaware of the significance of the proposed amendment, and based upon Member Pelkofer's statements, they were now opposed to the amendment.

Member Carlyle asked for clarification on whether the amendment would allow reimbursement of attorney fees and court costs only in those cases where the commission acted arbitrary and capricious. Carol Hunter stated that was correct.

The commissioners then entered into a discussion on the intent of the mandate finding and whether they intended to include reimbursement of court costs and attorney fees in excess of that provided by the Code of Civil Procedure and Government Code Section 800. Member Pelkofer stated that he had intended to allow full reimbursement under the parameters and guidelines because of the mandate finding. Member Carlyle stated that he did not intend to allow reimbursement of court costs in excess of what is normally permitted.

George Lumm, representing the County of San Mateo, stated that the county generally believes that commission decisions are unbiased. Consequently, a county would only pursue a claim beyond the commission when they feel they have been treated unfairly. In addition, it is very expensive for a county to pursue a test claim in court. Therefore, a county should be reimbursed for their court costs when a court overturns a commission decision.

Member Pelkofer moved to return the parameters and guidelines to staff, to have language added that clarifies that parties are entitled to reimbursement of all costs incurred as a result of a court action, when a commission ruling is overturned by the court. The vote on the motion was: Member Aceituno, aye; Member Carlyle, no; Member Creighton, no; Member Pelkofer, aye; Chairman Huff, no. The motion failed.

Member Carlyle made a second motion to amend the parameters and guidelines as proposed by the staff. The vote on the motion was: Member Aceituno, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, no; Chairman Huff, aye. The motion carried.

Item 6 Parameters and Guidelines Amendment
Chapter 1264, Statutes of 1980
PERS Circular Letter No. 800-510
PERS Retirement

Member Pelkofer requested clarification from legal counsel on the authority of the commission to rehear the test claim issue.

Commission legal counsel Carol Hunter responded that the commission needed to decide whether there is sufficient basis to rehear the test claim. Ms. Hunter pointed out that the commission does not have statutory authority to reconsider past decisions. However, under very limited circumstances where the parties have not presented evidence necessary for the commission to make a correct decision, the commission may reconsider a prior mandate finding. In support of this position, Ms. Hunter cited the Supreme Court case of Aylward v. State Board etc. Examiners (1948) 31 Cal.2d 833, 839. In the instant case, the "newly discovered" evidence was available but was not presented to the Board of Control by the parties; therefore, the commission must decide whether or not based on these circumstances it has the authority to reconsider the Board's decision.

C. Shelley Emerson, appearing for the City of Mountain View, reiterated the claimant's position on the original test claim that Chapter 1264/80 and PERS Circular Letter No. 800-510 contained reimbursable state mandates which the Board of Control so found. Further, Ms. Emerson stated that the parameters and guidelines are to set forth and define reimbursable costs, not change the scope of the mandate as would be done if the commission adopts the proposed

parameters and guidelines amendment as directed by the Legislature. It is the claimant's position that this amendment would effectively eviscerate the Board's original mandate finding by eliminating all eligible claimants from the existing parameters and guidelines.

In response to staff's recommendation that the commission reconsider the original mandate, Ms. Emerson stated that the documents from 1974 were in the possession of PERS at the time of the mandate finding and should have been introduced at that time. Additionally, PERS did nothing to implement the changes which allegedly should have occurred in 1974 and which would have eliminated the need for the 1980 PERS Circular Letter. In summary, Ms. Emerson stated that the commission should not adopt the proposed parameters and guidelines amendment even though it was understood that this action would result in no appropriation being made for Chapter 1264/80.

Ronald Beach, appearing with Ms. Emerson for the City of Mountain View, stated that in researching the issues in preparation for this hearing he could not find the documentation upon which staff was basing its recommendation for reconsideration, and understood PERS Circular Letter No. 800-510 to be implementing a new program.

David Christiansen, appearing on behalf of the Public Employees Retirement System, stated that had PERS understood the mandate process before the Board of Control, the documentation which has recently been made available to staff would have been provided at the original mandate hearing. Member Carlyle questioned whether PERS was in error in sending the Circular Letter in 1980 because in fact if the City of Mountain View had done what it was suppose to do in response to the 1969 and 1974 statutes, there would be no subsequent change needed in their contract in 1980. Mr. Christiansen responded that the change which occurred in 1980 was not the same as that which occurred in 1969 and 1974. However, the 1980 change was to clarify the prior language and effectively increase the field of employees which contracting employers could exclude from the PERS system. This was what PERS communicated to its contracting agencies in the PERS Circular Letter of 1980 and was intended to be informational in nature.

Member Aceituno stated his concern that a negative precedent could be established if the commission were to reconsider the decisions of the Board of Control.

Member Pelkofer made the motion that the commission reconsider this matter as to the question of the mandate based on additional information. The vote on the motion was: Member Aceituno, no; Member Carlyle, no; Member Creighton, aye; Member Pelkofer, aye, Chairman Huff, aye. The motion carried.

Item 7 Amendment to Parameters and Guidelines
Chapter 1568, Statutes of 1984
<u>Firefighters' Cancer Presumption</u>

William Carnazzo, Deputy City Attorney for the City of Sacramento appeared to state that he wants the commission to adopt the amendments to the parameters and guidelines as he had proposed and with which staff agreed because the parameters and guidelines will be more workable with the changes.

Member Pelkofer moved the adoption of staff's proposed parameters and guidelines which are identical to the language suggested by Mr. Carnazzo. The vote was unanimous. The motion carried.

Item 8 Statement of Decision
Chapter 846, Statutes of 1981
Residential Development Review Plans

Member Pelkofer moved the adoption of the proposed Statement of Decision. The vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statement of Decision
Chapter 961, Statutes of 1975
Collective Bargaining

Member Pelkofer moved that item 5 in the Findings of Fact be amended to state that the District "agreed" to pay a settlement, instead of "required", and that in item 2 in the Determination of Issues, the second sentence be removed, because it was unnecessary. Without objection the proposed statement of decision was amended and adopted.

With no further items on the agenda, Chairperson Huff adjourned the hearing at 11:25 a.m.

ROBERT W. EICH
Executive Director

RWE:jb:0037r

Adopted: 11/20/86
Amended: 3/26/87

Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d) (3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs--both direct and indirect--are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities--Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities - Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

WP 1422A

AGENDA

COMMISSION ON STATE MANDATES

Public Hearing
June 25, 1987
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

A. ROLL CALL

B. MINUTES

Item 1 Hearing of April 23, 1987

C. TEST CLAIMS

Item 2 Chapter 815, Statutes of 1979
Chapter 1327, Statutes of 1984
Chapter 757, Statutes of 1985
Short-Doyle Case Management

Item 3 Chapter 850, Statutes of 1979
In Forma Pauperis Filings

Item 4 Chapter 1327, Statutes of 1984
Chapter 1232, Statutes of 1985
Annual Short-Doyle Audits

D. PARAMETERS AND GUIDELINES

Item 5 Chapter 566, Statutes of 1974
Patient Aftercare Plans

E. PARAMETER AND GUIDELINES AMENDMENT

Item 6 Chapter 990, Statutes of 1983
Visitation of Minors

F. STATEWIDE COST ESTIMATES

Item 7 Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Item 8 Title 22, CAC, 64435(f)
Pretreatment Facilities

G. STATEMENTS OF DECISION

Item 9 Chapter 112, Statutes of 1985
Property Tax Limitation Act

Item 10 Chapter 612, Statutes of 1981
Agency Shop

H. PROPOSED REGULATION CHANGE

Item 11 Parameter and Guideline Amendments
Title 2, CAC, Section 1185.3

I. DISCUSSION ITEM

Item 12 Proposal to Increase Responses to Statewide Cost Estimate Surveys from the Education Mandated Cost Network.

J. EXECUTIVE SESSION

- Personnel
- Litigation

Note: All back-up material and supporting documentation for this meeting is available for public inspection at the office of the Commission on State Mandates, 1130 K Street, Suite LL-50, Sacramento, California; (916) 323-3562.

In addition, a complete copy of the agenda will be available for public inspection at the meeting.

WP 1646A

Hearing Date: 6/25/87
Claim Number: CSM-4204
Staff: Stephen Lehman
WP 0067s

PROPOSED STATEWIDE COST ESTIMATE
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Executive Summary

This proposed statewide cost estimate for Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984, is for the 1984-85 through 1987-88 fiscal years and totals $15,180,000. Staff recommends the adoption of the proposed statewide cost estimate.

Claimant

County of Fresno

Chronology

11/27/85	Claim filed with the Commission on State Mandates (CSM).
3/27/86	CSM approves test claim.
4/24/86	CSM adopts Statement of Decision.
6/23/86	Claimant submits proposed parameters and guidelines.
9/17/86	Claim continued from 9/25/86 hearing to 11/30/86 hearing by mutual agreement between staff and claimant.
11/30/86	CSM adopts parameters and guidelines.
3/26/87	CSM amends parameters and guidelines to delete language permitting reimbursement for court responses.

Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for costs mandated by the State.

Staff Recommendation

A survey was sent to 58 counties, 60 cities, and 60 school districts, asking them to report their actual and estimated reimbursable costs for this mandate which were incurred during the 1984-85 through 1987-88 fiscal years. Among those entities surveyed, 32 counties, 14 cities, and 14 school districts responded with usable data.

Based upon the data received (See Attachment "A"), the following is the total statewide cost estimate for all eligible claimants for the 1984-85 through 1987-88 fiscal years.

Fiscal Year	Amount
1984-85	$3,122,405
1985-86	3,593,877
1986-87	4,343,757
1987-88	4,120,403
TOTAL	$15,180,000 (R)

Staff recommends the adoption of a statewide cost estimate in the amount of $15,180,000 for the 1984-85 through 1987-88 fiscal years.

STATEWIDE COST ESTIMATE CALCULATIONS

Mandate Reimbursement Process

Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

Reimbursable Costs

The scope of this mandate allows reimbursement for both the cost of preparing and presenting successful test claims, and State Controller reimbursement claims. The nature of these costs are shown below.

A. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

B. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

Methodology and Data

A survey was sent to 58 counties, 60 cities, and 60 school districts, asking them to report their actual and estimated reimbursable costs for this mandate which were incurred during the 1984-85 through 1987-88 fiscal years. Among those entities surveyed, 32 counties, 14 cities, and 14 school districts responded with usable data.

The local governmental entities submitting cost information indicated fiscal year costs and estimates as follows:

Counties

Fiscal Year	Reimbursement Claim Costs	Test Claim Costs
1984-85	$444,627	$2,100
1985-86	399,369	1,500
1986-87	441,875	5,884
1987-88	429,100	5,100
Total:	$1,714,971	$14,585

Cities

Fiscal Year	Reimbursement Claim Costs	Test Claim Costs
1984-85	$16,367	$0
1985-86	34,685	0
1986-87	40,422	0
1987-88	42,998	0
Total:	$134,472	0

School Districts

Fiscal Year	Reimbursement Claim Costs	Test Claim Costs
1984-85	$38,020	$0
1985-86	39,958	0
1986-87	46,016	4,366
1987-88	45,120	0
Total:	$169,114	$4,366

Assumptions

1. The assumption is made that those counties that did not respond to the survey, have similar costs to those that did respond.

2. After speaking with a representative from the League of California Cities, staff was informed that of all cities in the state, approximately 350 cities participate in the mandate reimbursement process. Therefore, the assumption is made that those cities that were not surveyed or did not respond to the survey, have similar costs as those that did respond.

3. After speaking with a representative from the School Services of California, staff was informed that of all school entities in the state, approximately 600 entities participate in the mandate reimbursement process. Therefore, the assumption is made that those school entities that were not surveyed or did not respond to the survey, have similar costs as those that did respond.

4. It is assumed that all costs claimed by the responding entities, whose data were used for this estimate, are reimbursable costs under the parameters and guidelines.

5. It is assumed that all counties are generally impacted by the same mandates, and all cities are generally impacted by the same mandates, etc. Therefore, straight averages are used in calculating the cost estimate.

Calculations

1. If it is assumed that $1,729,556 represents 55 percent of the statewide cost impact of this mandate on counties, then 100 percent of the estimated statewide cost to counties would total $3,144,642 for the 1984-85 through 1987-88 fiscal years.

   Following is the total statewide cost estimate for all counties based on the preceding figures and categorized by fiscal year.

Fiscal Year	Reimbursement Claims	Test Claims
1984-85	$808,412	$ 3,818
1985-86	726,125	2,727
1986-87	803,409	10,698
1987-88	780,181	9,272
	$3,118,127	$26,515

Combined Total: $3,144,642

2. If it is assumed that $134,472 represents 4 percent of the statewide cost impact of this mandate on cities, then 100 percent of the estimated statewide cost to cities would total $3,361,800 for the 1984-85 through 1987-88 fiscal years.

   Following is the total statewide cost estimate for the approximately 350 cities that participate in the mandate reimbursement process. The estimate is based upon the preceding figures and categorized by fiscal year.

Fiscal Year	Reimbursement Claims	Test Claims
1984-85	$ 409,175	$ 0
1985-86	867,125	0
1986-87	1,010,550	0
1987-88	1,074,950	0
	$3,361,800	$ 0

Combined Total: $3,361,800

3. If it is assumed that $173,480 represents 2 percent of the statewide cost impact of this mandate on school districts, then 100 percent of the estimated statewide cost would total $8,674,000 for the 1984-85 through 1987-88 fiscal years.

Following is the total statewide cost estimate for the approximately 600 school entities that participate in the mandate reimbursement process. The estimate is based upon the preceding figures and categorized by fiscal year.

Fiscal Year	Reimbursement Claims	Test Claims
1984-85	$1,901,000	$0
1985-86	1,997,900	0
1986-87	2,300,800	218,300
1987-88	2,256,000	0
	$8,455,700	$218,300

Combined Total: $8,674,000

4. Based upon the preceding figures, the following is the total statewide cost estimate for all eligible claimants for the 1984-85 through 1987-88 fiscal years.

Fiscal Year	Amount
1984-85	$3,122,405
1985-86	3,593,877
1986-87	4,343,757
1987-88	4,120,403
TOTAL	$15,180,442

Mandate Reimbursement Process

Cost Survey Results

CITIES

	84-85		85-86		86-87		87-88	
	SCO	CSM	SCO	CSM	SCO	CSM	SCO	CSM
	6,100		1,200		9,500		10,000	
	600		3,950		2,000		2,000	
	500		1,025		1,075		800	
	842		1,952		641		641	
	800		1,900		6,896		8,050	
	-0-		1,370		2,486		2,500	
	300		1,250		4,600		5,700	
	1,000		1,500		3,000		2,500	
	1,050		1,092		1,147		1,204	
	309		870		1,708		1,802	
	1,912		2,138		2,352		2,587	
	1,049		1,493		1,550		1,610	
	34		36		38		40	
	1,871		4,109		3,429		3,564	
Sample Total	16,367		34,685		40,422		42,998	
Statewide Estimate	409,175		867,125		1,010,550		1,074,950	

Factor .04

Total 3,361,800

Mandate Reimbursement Process

Cost Survey Results

COUNTIES

	84-85		85-86		86-87		87-88	
	SCO	CSM	SCO	CSM	SCO	CSM	SCO	CSM
			821					
	3,500		3,000		3,500		4,000	
	4,925		8,491		10,500		10,500	
	8,391		15,003		10,972		10,378	
	850		950		1,050		1,150	
	7,080		4,584		4,500		4,500	
	2,681		3,288		2,336		2,257	
	41,587		28,587		29,882		29,087	
	41,100		47,600		60,700		55,200	
	5,200		5,800		6,660		7,500	
	2,600		2,600		2,720		2,720	
	112		97		76		83	
	56,348		28,815		45,187		40,922	
	9,469		4,797		6,855		6,500	
	1,587		1,886		2,039		1,950	
	58,000		58,000		58,000		58,000	
	20,427		21,058		23,261		33,924	
	3,500		3,530		3,800		4,500	
	11,356		12,546		8,310		6,067	
	12,347		9,304		12,004		12,338	
	35,000		38,000		41,000		45,000	
	4,094		4,199		3,442		4,268	
	8,775		11,150		10,575		9,200	
	5,890		6,412		6,376	384	6,691	100
	3,190		6,000		6,000		6,000	
	12,000	2,100	12,000		12,000		14,000	
	26,500		20,000	500	9,000	5,500	10,000	5,000
	17,590		6,492		8,305		9,645	
	20,222		12,777		27,000		14,000	
	771		971	1,000	1,053		851	
	5,268		6,371		6,062		4,869	
	1,139		3,144		6,446		-0-	
	13,128		11,096		12,324		13,000	
Sample Total	444,627	2,100	399,369	1,500	441,875	5,884	429,100	5,100
Statewide Estimate	808,412	3,818	726,125	2,727	803,409	10,698	780,181	9,272

Factor .55

Total 3,144,642

Mandate Reimbursement Process

Cost Survey Results

SCHOOLS

	84-85		85-86		86-87		87-88	
	SCO	CSM	SCO	CSM	SCO	CSM	SCO	CSM
	2,765		2,930		3,092		3,184	
	1,783		1,890		1,994		2,054	
	4,200		3,400		4,000		4,200	
	1,968		2,027		2,116		2,180	
	1,105		1,166		1,200		1,300	
	2,007		2,091		2,200	4,366	2,300	
	2,476		3,875		3,445		3,445	
	2,625		2,884		3,176		-0-	
	245		265		280		275	
	2,462		3,601		3,898		3,884	
	1,311		1,052		1,042		1,125	
	1,163		1,007		2,413		2,863	
	3,000		3,500		4,000		5,000	
	10,910		10,270		13,160		13,310	
Sample Total	38,020		39,958		46,016	4,366	45,120	
Statewide Estimate	1,901,000		1,997,900		2,300,800	218,300	2,256,000	

Factor .02
Total 8,674,000

WP:0047s

Adopted: 11/20/86
Amended: 3/26/87

Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d) (3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs--both direct and indirect--are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities--Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities - Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

WP 1422A

MINUTES

COMMISSION ON STATE MANDATES
June 25, 1987
10:00 a.m.
State Capitol, Room 2040
Sacramento, California

Present were: Chairperson Jesse R. Huff, Director, Department of Finance; Peter Pelkofer, Deputy State Controller; Huston T. Carlyle, Jr., Director, Office of Planning and Research; Fred R. Buenrostro, Representative for the State Treasurer; and Robert C. Creighton, Public Member.

There being a quorum present, Chairperson Huff called the meeting to order at 10:05 a.m.

Item 1 Minutes

The Commission on State Mandates considered the minutes of the April 23, 1987, hearing. Chairperson Huff asked if there were any changes or objections to the minutes. Without objection, the minutes were approved.

Item 2 Test Claim
Chapter 815, Statutes of 1979
Chapter 1327, Statutes of 1984
Chapter 757, Statutes of 1985
Short-Doyle Case Management

Paul Robinson, representing the County of Fresno, stated that the county believes that the Short-Doyle case management system as originally implemented by Chapter 815, Statutes of 1979, and later amended by Chapter 1327, Statutes of 1984 and Chapter 757, Statutes of 1985, has established a state mandated program upon the county. Mr. Robinson noted that the Department of Mental Health (DMH) submitted a late filing on the issue of potential cost savings that resulted from Chapter 1327/84, which the county has not had an opportunity to respond because of the short notice.

Chairman Huff stated that the commission needed to determine whether it would accept the late filing from the DMH. The commission staff noted that the DMH filing was substantive information and that the commission should either accept the filing, or continue the claim. Member Pelkofer agreed and moved to accept the late filing from the DMH.

Lynn Whetstone, representing the DMH, stated that Chapter 1327/84 revamped a number of Short-Doyle provisions, and as a result, counties may realize some cost savings. Ms. Whetstone noted that Chapter 1327/84 also provided for audit forgiveness for acts performed prior to July 1, 1984. As a result, the County of Fresno was forgiven $25,492 which was owed to the state.

Member Pelkofer stated that it appeared that the county needed to identify specific costs in order for the commission to determine whether any cost savings resulted from Chapter 1327//84. In response, Mr. Robinson stated that he did not believe that it was appropriate to offset an audit forgiveness for costs in the 1981-82 fiscal year against mandated costs incurred in the 1984-85 fiscal year.

Staff noted that Chapter 1327/84 was responsible for both the audit forgiveness and the Short-Doyle case management program. Chairperson Huff agreed, and noted that in Section 94 of Chapter 1327/84, the Legislature acknowledged that the bill contained both costs and offsetting savings and, therefore, no appropriation was needed in the bill.

Paul Robinson noted that the audit forgiveness is a one-time savings and inquired whether it was appropriate to find no mandate based upon a one-time savings when the mandated costs were ongoing. Member Carlyle, in response, asked the DMH if they had identified any ongoing cost savings. Ms. Whetstone stated that they identified the audit forgiveness because it was the easiest to quantify. However, it was not yet known whether it would be possible to identify any specific ongoing savings as they would vary from county to county.

Member Creighton moved to approve the staff recommendation.

Chairman Huff noted that only 10 percent of the case management costs would be reimbursable because the remaining costs are reimbursed through the Short-Doyle Act, and inquired of the Department of Finance (DOF) on the existence of cost savings. Jim Apps, representing the DOF stated that the issue of offsetting savings can addressed in the parameters and guidelines.

The vote on Member Creighton's motion was unanimous. The motion carried.

Item 3 Test Claim
Chapter 850, Statutes of 1979
Chapter 1221, Statutes of 1982
Chapter 652, Statutes of 1984
California Rule of Court 985
<u>In Forma Pauperis Filings</u>

Paul Robinson and Vincent McGraw appeared on behalf of the claimant, Fresno County. Mr. McGraw made a presentation which enumerated issues of the claim from the claimant's perspective. Mr. McGraw stated that the statutes and rules of court do mandate a higher level of service. He referred to Government Code Section 68511.3 and stated that in forma pauperis "does have its roots in British common law" and that the courts do have the inherent power to waive fees, but that this does not mean that Section 68511.3 does not mandate a higher level of service. He then explained the content of Section 68511.3 to the commission and detailed the provisions of the section which Fresno County alleges contain mandated activities which comprise a higher level of service. Mr. McGraw then discussed California Rule of Court in the same manner and enumerated the language of the rule which contains alleged mandates. Mr. McGraw went on to say that there has been a 675 percent increase in in forma pauperis actions in Fresno County. He also stated that

the in forma pauperis service is mandated because Fresno County would be sanctioned if it failed to comply with the statutes or rule of court. Mr. McGraw continued his presentation by elaborating on the above points.

Jim Apps of the Department of Finance stated agreement with staff's analysis and recommendation and agreed that the statutes and rule of court appear to lend uniformity to previously required activities in the courts throughout the state. Mr. Apps stated that the Department of Finance recommends the commission not find a mandate for this claim.

Member Carlyle asked Mr. McGraw if Fresno County had a procedure prior to 1979 which required the county to utilize the in forma pauperis status for those requesting the status. Mr. McGraw replied that the county did have forms for the purpose which the county clerks gave to litigants who wished to file in forma pauperis. Paul Robinson stated that prior to these statutes and rule of court there was very little activity for documenting the status of in forma pauperis activities.

Discussion followed regarding whether the increased number of in forma pauperis filings experienced in Fresno County is a result of the statutes at issue or an occurrence related to population growth and/or other factors. Member Pelkofer stated that he has heard the arguments presented but that he is not willing to accept that the increase in filings occurred because of these statutes or the rule of court. Member Carlyle stated that it was apparent that Fresno County was comfortable with the level of service that it provided prior to 1979 and that what they are providing now may cost the county more money. He indicated that if there were counties which were providing more activities prior to 1979 than after enactment of the statutes and rule of court, would their experience be the opposite of that alleged by Fresno County. Discussion then centered on the "reasonableness" in terms of the proper level of service for in forma pauperis.

Robert Eich, Executive Director of the Commission on State Mandates quoted Government Code Section 17556(b) which states that the commission shall not find costs mandated by the state if the statute or executive order affirms for the state that which had been declared existing law by action of the court. He added that the issue may be that if the commission believes that these statutes and rule of court reasonably enact that which was common law as declared by the court, then the commission may have the authority to find no mandate. Member Pelkofer stated that this is the issue and that the commission must decide if the statutes and rule of court are a reasonable interpretation of the duties that existed at that time.

Mr. McGraw stated that the requirements of the statutes and rule of court are requirements in addition to the actions required by common law and that they expand the scope of the required in forma pauperis activities.

Member Pelkofer made a motion that the commission take the matter under submission. The vote was Member Buenrostro, aye; Member Carlyle, aye; Member Creighton, no; Chairman Huff, aye; Member Pelkofer, aye. The motion carried.

Item 4 Test Claim
Chapter 1327, Statutes of 1984
Chapter 1232, Statutes of 1985
Annual Short-Doyle Audits

James Norton, representing the County of Ventura, summarized the claim and noted the late filing from the Department of Mental Health (DMH). Mr. Norton also noted that the issues on this test claim were similar to Item 2 of the commission's agenda, and because of the short notice of the DMH filing, the county did not have an opportunity to respond to the issue of offsetting costs.

Lynn Whetstone, representing the DMH, stated that because of the provisions of Chapter 1327, Statutes of 1984, the county received an audit forgiveness of $94,244 which was owed to the state for acts performed prior to July 1, 1984.

Member Carlyle asked the DMH whether the audit forgiveness was a one-time savings. Ms. Whetstone stated that it was, however, the audit forgiveness was more closely tied to the the audit requirement the claimant was alleging to be a mandated program.

Member Creighton moved the adoption of the staff recommendation.

Member Pelkofer then inquired whether the parameters and guidelines should specify that the audit forgiveness should be offset against the county's reimbursement claim. Staff stated if that is the wish of the commission, then it should be stated in the motion, for the sake of clarity.

Mr. Norton stated that it was unreasonable to offset a one-time savings for prior years audits against an ongoing cost of a new mandate. The commission then discussed the need for the DMH and the claimant to address the issue of offsetting savings before the commission could determine whether Chapter 1327/84 imposes a state mandated program.

Member Creighton withdrew his earlier motion and moved to continue the claim so that the parties could address the issue of offsetting savings. Without objection, the motion carried.

Item 5 Parameters and Guidelines
Chapter 566, Statutes of 1974
Patient Aftercare Plans

Staff noted that the proposed parameters and guidelines contained an improper reference to the Revenue and Taxation Code and would need a technical amendment to to reference the Government Code.

Member Pelkofer moved the adoption of the staff proposed parameters and guidelines, with the necessary technical amendments. The vote on the motion was unanimous. The motion carried.

Item 6 Parameters and Guidelines Amendment
Chapter 990, Statutes of 1983
Visitation of Minors

Paul Robinson appeared on behalf of the claimant, Fresno County. Mr. Robinson stated agreement with the staff analysis and recommendation.

Member Pelkofer moved adoption of staff's recommendation. The vote on the motion was unanimous. The motion carried.

Item 7 Proposed Statewide Cost Estimate
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Mandate Reimbursement Process

Member Pelkofer moved the adoption of the proposed statewide cost estimate. The vote on the motion was: Member Buenrostro, no; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, no. The motion carried.

Item 8 Proposed Statewide Cost Estimate
Title 22, CAC, Section 64435(f)
Pretreatment Facilities

Member Creighton moved the adoption of the proposed statewide cost estimate. The vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statement of Decision
Chapter 112, Statutes of 1985
Property Tax Limitation Act

Member Carlyle moved the adoption of the proposed statement of decision. The vote on the motion was: Member Buenrostro, abstain; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, aye. The motion carried.

Item 10 Proposed Statement of Decision
Chapter 612, Statutes of 1981
Agency Shop

Member Pelkofer moved the adoption of the proposed statement of decision. The vote on the motion was: Member Buenrostro, abstain; Member Carlyle, aye; Member Creighton, aye; Member Pelkofer, aye; Chairperson Huff, aye. The motion carried.

Item 11 Proposed Regulation Change
Title 2, CAC, Section 1185.3
Parameters and Guidelines Amendments

Member Pelkofer expressed concerns on whether the California Cities SB90 Service had the authority to place a proposed amendment to regulations before the commission. Staff noted that regulations are open to public comment and that under the Administrative Procedures Act, the California Cities SB90 Service had the authority to request an amendment to the commission's regulations.

Member Pelkofer moved the acceptance the proposed amendment to the regulations. The vote on the motion was unanimous. The motion carried.

DISCUSSION ITEM

Item 12 Proposal to Increase Responses to Statewide Cost Estimate Surveys from the Education Mandated Cost Network

Carol Miller, representing the Education Mandated Cost Network (EMCN), proposed that they distribute cost estimate survey forms in an effort to increase the number of responses to the cost survey forms distributed by the commission.
After some discussion of this proposal, Member Creighton moved and Member Pelkofer seconded the motion to approve a modified distribution system. The motion allowed for the commission staff to inform the EMCN when a cost survey is to be mailed. The staff and EMCN would develop a mailing list to be utilized for sending out the cost survey forms. At the time of this mailing, the EMCN could send a letter requesting the individual school districts to respond to the survey form.

With no further items on the agenda, Chairperson Huff adjourned the hearing at 11:43 a.m.

ROBERT W. EICH
Executive Director

RWE:jb:0037r

COMMISSION ON STATE MANDATES

Public Hearing

October 26, 1995
10:00 a.m.
State Capitol
Room 444
Sacramento, California

I ROLL CALL

II APPROVAL OF MINUTES

Item 1 MINUTES
Hearing of August 24, 1995

III ACTION ON MANDATE CLAIMS

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

A. TEST CLAIMS

Item 2 CSM-4449
Labor Code Section 4707, Subdivisions (a) & (b)
Chapter 478, Statutes of 1989
Workers' Compensation Benefits

Item 3 CSM-4471
Government Code Section 68113
Chapter 189, Statutes of 1991
Judicial Council Reports

Item 4 CSM-4474
Education Code Section 48900.1
Chapter 1284, Statutes of 1988
Pupil Suspension: Parent Classroom Visits

Item 5 CSM-4475
Welfare and Institutions Code Section 827
Chapter 1423, Statutes of 1984
Chapter 1019, Statutes of 1994
Juvenile Court Notices II

Item 6 CSM-4476
Education Code Sections 48209.1, 48209.7, 48209.9
Chapter 1262, Statutes of 1994
Choice Transfer Appeals

B. PROCEDURAL ISSUES

Item 7 CSM-4480
Goss v. Lopez - Procedural Issue

C. STATEMENT OF DECISION

Item 8 CSM-4465
Health & Safety Code Sections 33020, 33680, 33681, 33681.13, 33681.5, 33682.5, and 33683
Revenue & Taxation Code Sections 97, 97.01, 97.02, 97.03, 98 and 98.6
Chapter 699, Statutes of 1992
Chapter 700, Statutes of 1992
Chapter 68, Statutes of 1993
Chapter 566, Statutes of 1993
F/Y 1993-94 ERAF Contributions

Item 9 CSM-4470
Governor's Executive Order; March 4, 1994
43rd Assembly District Vacancy Election [Affirming the withdrawal of the test claim by claimant]

Item 10 CSM-4471
Government Code Section 68113
Chapter 189, Statutes of 1991
Judicial Council Reports [If necessary, to affirm withdrawal of the test claim by claimant]

D. PARAMETERS AND GUIDELINES

Item 11 CSM-2753
Penal Code Sections 1026 and 1026.5
Chapter 1114, Statutes of 1979
Chapter 650, Statutes of 1982
Not Guilty by Reason of Insanity - Amendment

Item 12 CSM-4442
Education Code Sections 46601, 46601.5 and 48204, subdivision (f)
Chapter 172, Statutes of 1986
Chapter 742, Statutes of 1986 (Continued)

(Item 12, Continued) Chapter 853, Statutes of 1989
Chapter 10, Statutes of 1990
Chapter 120, Statutes of 1992
Interdistrict Attendance Permits

Item 13 CSM-4485
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Mandate Reimbursement Process - Amendment

E. STATEWIDE COST ESTIMATE

Item 14 CSM-4448
Revenue and Taxation Code Sections 97, 97.01, 97.02, 97.03, 97.035, 97.5, 98, and 99
Chapter 697, Statutes of 1992
Chapter 699, Statutes of 1992
Chapter 700, Statutes of 1992
Chapter 899, Statutes of 1992
Chapter 1369, Statutes of 1992
Chapter 66, Statutes of 1993
Chapter 68, Statutes of 1993
Chapter 904, Statutes of 1993
Chapter 905, Statutes of 1993
Chapter 1279, Statutes of 1993
Allocation of Property Tax Revenues: ERAF

IV APPLICATIONS FOR A FINDING OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO CCR, TITLE 2, CHAPTER 2.5, ARTICLE 6.5
WELFARE AND INSTITUTIONS CODE SECTION 17000.6 (SB 1033)

PROCEDURAL ISSUES

Item 15 Assignment of hearing panel or hearing officer pursuant to CCR, Title 2, regulation section 1186.62 for San Diego County and/or other applicant counties.

Item 16 Determination of vote requirement for hearing panels.

Item 17 Discussion/action item on SB 1033 workload and processes

V OTHER BUSINESS

Item 18 Executive Director's report on Commission staff activities, budget and legislation

VI CLOSED EXECUTIVE SESSION

A. Personnel matters pursuant to Government Code section 11126, subdivision (a), and Government Code section 17526.

B. Litigation matters pursuant to Government Code section 11126, subdivision (q)(1), regarding *County of Los Angeles v. Commission on State Mandates of the State of California, State of California, et al.*, Los Angeles Superior Court No. BS 026858, 2nd Civil No. B091453

San Diego Unified School District v. State of California, et al., San Diego County Superior Court No. 674127, 4th Civil No. D023914

Carmel Valley Fire Protection District, et al. v. State of California, et al., Los Angeles Superior Court No. BC 115599, Second Appellate District, Division Five

Mammoth Lakes Fire Protection District v. State of California, et al., Mono County Superior Court No. 11515

Redevelopment Agency of the City of San Marcos v. State of California, Commission on State Mandates, San Diego Superior Court No. 686818

County of San Diego v. State of California, et al., San Diego Superior Court No. 634931, Court of Appeal No. D 018634, Calif. Supreme Court No. S 046843

City of San Jose v. State of California, et al., Santa Clara County Superior Court No. 734424, Court of Appeal No. H014099

Billy Goff, et al. v. California Commission on State Mandates, Sacramento County and Board of Supervisors, et al., Sacramento County Superior Court No. 95CS01215

Stephen Pincus, et al. v. California Commission on State Mandates, Alameda County, et al., San Francisco Superior Court No. 972504

OPEN SESSION

VII APPLICATIONS FOR A FINDING OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO CCR, TITLE 2, CHAPTER 2.5, ARTICLE 6.5

WELFARE AND INSTITUTIONS CODE SECTION 17000.6 (SB 1033)

ACTION ON SB 1033 APPLICATIONS

Item 19 **CLARIFICATION TO STATEMENT OF DECISION ADOPTED AUGUST 24, 1995**
County of Alameda Filing of June 9, 1995 and Preliminary Decision of August 7, 1995

Note: All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Executive Director, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

In addition, a complete copy of the above described materials will be available for public inspection at the meeting.

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Hearing Date: October 26, 1995
Staff: Kirk G. Stewart
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PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)

Mandate Reimbursement Process

Executive Summary

These proposed substantive amendments to the parameters and guidelines concerning the mandate reimbursement process were included in the Budget Act of 1995 within the support budget appropriations for the State Controller's Office (Item 0840-001-001, Provision 11) and for the Commission on State Mandates (Item 8885-001-001, Provision 1). These Budget Act Items are included as Attachment C. The applicable portion of those provisions begins with their second paragraph, in which they state:

> In addition, the Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
>
> (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
>
> (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

Only one set of parameters and guidelines is known to be affected by this Budget Act language, those titled *Mandate Reimbursement Process, Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1986*, which pertain to the general procedure for local government submittal of mandate claims. The original parameters and guidelines were adopted on November 20, 1986; they were amended on March 26, 1987 (Attachment B). The original Test Claim number was CSM-4204.

The Budget Act provisions to be included would be effective only for Fiscal Year 1995-96 and therefore are presented as an appendix to the March 26, 1987, parameters and guidelines (Attachment A). Not included in these amendments are technical corrections to the 1987 parameters and guidelines which the State Controller and claimants' representatives plan to submit to the Commission within several months. While the State Controller, Department of Finance and claimants' representatives are believed to be in agreement with the technical fashion in which these Budget Act provisions have been included in the parameters and guidelines, there remains disagreement among claimants' representatives with the Legislature's action to require these amendments. (See Correspondence, Attachment D.)

Staff recommends that the Commission adopt the proposed parameters and guidelines that are described in Attachment A.

II 0002

Adopted: November 20, 1986
First Amendment: March 26, 1987
Hearing for Second Amendment: October 26, 1995
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PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)

Mandate Reimbursement Process

[FOR FISCAL YEAR 1995-96 ONLY, THESE PARAMETERS AND GUIDELINES ARE AMENDED, PURSUANT TO THE REQUIREMENTS OF PROVISION 11 OF ITEM 0840-001-001 AND PROVISION 1 OF ITEM 8885-001-001 OF THE BUDGET ACT OF 1995, TO INCLUDE APPENDIX A. NO OTHER CHANGES TO THE MARCH 26, 1987, VERSION OF THE PARAMETERS AND GUIDELINES ARE MADE.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs

would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities -- Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such

costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The

reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Year 1995-96[1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the

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[1] The limitation added by the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, is shown as part A. of this Appendix.

incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.