

Edmund G. Brown Jr.
GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2013 – December 31, 2013

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Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562
www.csm.ca.gov

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INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.¹

This report includes a summary of six test claims, three of which were consolidated for hearing, that the Commission denied during the period from January 1, 2013 through December 31, 2013. The complete text of the statements of decision for the denied claims may be found on the Commission's website at http://www.csm.ca.gov/denied_mandates.shtml.

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1188.2.

¹ Government Code section 17601.

SUMMARY OF DENIED CLAIMS²

County Formation Cost Recovery, 06-TC-02

County Formation Cost Recovery

06-TC-02

Government Code Sections 23300-23397

Statutes 1974, Chapter 1392, Sections 2 and 3; Statutes 1975, Chapter 1247; Statutes 1976, Chapter 1143; Statutes 1977, Chapter 1175; Statutes 1978, Chapter 465; Statutes 1979, Chapter 370; Statutes 1980, Chapter 676; Statutes 1981, Chapter 1114; Statutes 1984, Chapter 226; Statutes 1985, Chapter 702; Statutes 1986, Chapter 248; Statutes 1994, Chapter 923; Statutes 2002, Chapter 784; and Statutes 2004, Chapter 227

Governor's Press Release, May 10, 2004

Santa Barbara County, Claimant

Test Claim Filed: October 13, 2006

Statement of Decision Adopted: April 19, 2013

This test claim sought reimbursement for costs incurred by Santa Barbara County pursuant to a failed attempt to partition the county and create, from the northern area of the county, a new local government, Mission County. Santa Barbara County incurred costs related to complying with the County Formation Law, including the formation and staffing of a County Formation Review Commission, the determination of eleven economic impact and feasibility criteria identified in Government Code section 23332, and the conduct of a popular election to determine whether the new county should be created.

The Commission denied this test claim, finding that the test claim statutes and regulations do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- All requirements of the County Formation Law enacted in Statutes 1974, chapter 1392 were denied, as having been enacted prior to January 1, 1975. Many of the subsequent amendments to the test claim statutes were not substantive, while others imposed requirements upon the state, or the proponents of a new county.
- Another subset of statutes enacted after January 1, 1975 impose a new program or higher level of service relating to the holding of a second election to determine a county seat and to select officers of the new county, but only if the election to determine whether to form the county is successful. In this case, because the first election failed to approve the new county, there is no evidence in the record that the claimant incurred increased costs mandated by the state for these activities.
- Several amendments were alleged to have imposed activities and costs upon the Mission County Formation Review Commission, which is not an eligible claimant before the Commission. Those costs are shifted from one local entity to another; without a corresponding new program or higher level of service, they are not reimbursable, pursuant to the courts' interpretation of article XIII B, section 6. Moreover, the costs are

² The Commission's complete Statements of Decision for these claims may be found on the Commission's website at http://www.csm.ca.gov/denied_mandates.shtml.

shifted pursuant to provisions of Statutes 1974, chapter 1392, which were enacted prior to January 1, 1975, and never amended.

- Finally, the Legislature's findings and determinations when enacting the County Formation Law regarding the existence of reimbursable state-mandated increased costs are not dispositive, and public policy is not a sufficient justification for finding a reimbursable state mandate.

High School Exit Exam II

08-TC-02

Education Code Sections 37254, 52378, 52379, 52380

Statutes 2007, Chapter 526 and Statutes 2007, Chapter 730

California Code of Regulations, Title 5, Section 1204.5

Register 2004, No. 21, eff. May 19, 2004; Register 2005, No. 33, eff. Aug. 16, 2005; Register 2006, No. 11, eff. Mar. 16, 2006; and Register 2007, No. 51, eff. Dec. 20, 2007

San Jose Unified School District, Claimant

Test Claim Filed: October 14, 2008

Statement of Decision Adopted: May 24, 2013

This test claim sought reimbursement for activities related to the California High School Exit Examination (CAHSEE), and related counseling programs to assist pupils in passing the CAHSEE. These counseling programs are the CAHSEE Intensive Instruction and Services Program and the Middle and High School Supplemental Counseling Program. The claimant also pled a regulation that addresses the administration of the CAHSEE to 11th and 12th grade pupils and adult students.

The Commission denied this test claim, finding that the test claim statutes and regulations do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- Education Code section 37254, as amended by Statutes 2007, chapter 526, does not impose a state-mandated program on school districts because it simply revised definitions of “eligible pupil,” and “intensive instruction and services,” and altered the funding formula for the CAHSEE Intensive Instruction Program and because, according to section 37254(d), all of the requirements in 37254 are imposed as “a condition of receiving funds.”
- Sections 52378 and 52380, as amended by Statutes 2007, chapter 526, do not impose a state-mandated program on school districts because they impose requirements as “a condition of receiving funds.” There is no legal requirement for school districts to seek or receive funds for the Middle and High School Supplemental Counseling Program.
- Section 52379 (Stats. 2007, ch. 730) was amended as part of an annual ‘clean-up’ bill to correct wording in the Middle and High School Supplemental Counseling Program but imposes no requirements on a school district.
- The test claim, with respect to section 1204.5 of the title 5 regulations, as that regulation was adopted in 2004, and amended in 2005 and 2006, was not timely filed and, thus, the Commission did not have jurisdiction to determine whether those versions of the regulation impose a reimbursable state-mandated program. Title 5, section 1204.5 (Register 2007, No. 51, operative and effective on Dec. 20, 2007) imposes no new requirements on school districts and therefore does not impose a state-mandated new program or higher level of service.

General Health Care Services for Inmates

07-TC-12

Penal Code Section 4011.10

Statutes 2005, Chapter 481 (SB 159) and Statutes 2006, Chapter 303 (SB 896)

Orange County Health Care Agency, Claimant

Test Claim Filed: June 30, 2008

Statement of Decision Adopted: September 27, 2013

This test claim sought reimbursement for costs incurred by local law enforcement agencies for treatment of law enforcement patients receiving emergency medical care. Penal Code section 4011.10 allows local agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients. It also sets statutory limits on the amount that hospitals that do not contract with local agencies may charge for emergency health care services at a rate equal to 110 percent of the hospital's actual costs. Prior to the enactment of the test claim statutes, local agencies were not expressly authorized to contract for emergency health care services for law enforcement patients and no cap for the cost of services provided by non-contracting hospitals was in place.

The Commission denied this test claim, finding that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- Penal Code section 4011.10 does not require local law enforcement agencies to perform any activities. Penal Code section 4011.10, as added by Statutes 2005, chapter 481, and amended by Statutes 2006, chapter 303, authorizes local agencies to contract for emergency medical services for law enforcement patients and caps the amount that non-contracting hospitals may charge. Nothing in section 4011.10 directs or obligates police chiefs, county sheriffs, or other local agencies that contract for emergency health care services to engage in any activity or task.
- Although the claimant filed a declaration showing that it has incurred increased costs as a result of Penal Code section 4011.10, the statute does not impose any mandated activities on the claimant or mandate the county to increase its level of service provided to the public. A statute that simply results in increased costs, without mandating local agencies to perform new activities or a higher level of service, does not require reimbursement under the Constitution. As the courts have determined, "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."³

³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; see also, *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876.

Standardized Testing and Reporting (STAR) II and III

05-TC-02, 05-TC-03, and 08-TC-06

Education Code Sections 60601, 60602, 60603, 60604, 60605, 60605.6, 60606, 60607, 60611, 60615, 60630, 60640, 60641, 60642.5 as added or amended by Statutes 1995, Chapter 975; Statutes 1997, Chapter 828; Statutes 1999, Chapter 735; Statutes 2000, Chapter 576; Statutes 2001, Chapter 20; Statutes 2001, Chapter 722; Statutes 2002, Chapter 1168; Statutes 2003, Chapter 773; Statutes 2004, Chapter 183; Statutes 2004, Chapter 233; Statutes 2005, Chapter 676; Statutes 2007, Chapter 174; Statutes 2007, Chapter 730; Statutes, 2008, Chapter 473; Statutes 2008, Chapter 757

California Code of Regulations, Title 5, Sections 850, 851, 852, 853, 855, 857, 858, 859, 861, 862, 863, 864.5, 865, 866, 867, 867.5, and 868, as added or amended by Register 2005, No. 34 (Sept. 21, 2005), Register 2006, No. 45 (Dec. 8, 2006)⁴

San Diego Unified School District, Grant Joint Union High School District,
Twin Rivers Unified School District, Claimants

Test Claim Filed: August 15, 2005

Statement of Decision Adopted: December 6, 2013

This test claim sought reimbursement for activities related to the Standardized Testing and Reporting program (STAR). Each spring, California students in grades 2 through 11 take a series of standardized tests administered under the Standardized Testing and Reporting program (STAR). The STAR program was first enacted in 1997 and has gone through many changes over the years. These consolidated test claims plead statutes enacted from 1995 through 2008, and amendments to title 5 regulations adopted in 2005 and 2006.

The Commission denied this test claim, finding that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- The Commission does not have jurisdiction over several statutes and regulations pled because the Commission has already issued a prior final decision on the Education Code sections added by Statutes 1997, chapter 828, and the test claims were filed beyond the statute of limitations for several other statutes and regulations.
- As for the statutes and regulations properly pled, the state has appropriated state and federal funds sufficient to pay for the costs of the new required activities. This funding, by law, “shall first be used” to offset costs that may be claimed through the state mandates reimbursement process for the STAR program and there is no evidence in the record of increased costs mandated by the state beyond the funding appropriated to school districts. Thus, there are no costs mandated by the state pursuant to Government Code section 17556(e).

⁴ Test Claim 08-TC-06 refers to regulations effective February 2007, but there were no test claim regulations effective on that date.