

ITEM 5
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
PROPOSED DECISION

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes 1993, Chapters 1136; 1137; 1138

As Alleged to be Modified by:

Proposition 30, General Election, November 6, 2012

Open Meetings Act/Brown Act Reform (CSM-4257/4469)

13-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On March 23, 1988, the Commission on State Mandates (Commission) adopted the *Open Meetings Act* test claim, CSM-4257.¹ On June 28, 2001, the Commission adopted the *Brown Act Reform* test claim, CSM-4469. On April 25, 2002 the Commission adopted and consolidated parameters and guidelines for *Open Meetings Act/Brown Act Reform*. Those parameters and guidelines provide for reimbursement for a county, city, city and county, school district or special district for specified notice, agenda and other public disclosure related requirements required by Government Code sections 54952, 54954.2(a), 54954.3(a), 54957.1(a-c) and 54957.7(a-b), as those sections are added or amended by Statutes 1986, chapter 641; and Statutes 1993, chapters 1136, 1137, and 1138.

On July 19, 2005, Statutes 2005, chapter 72 (AB 138) became effective and directed the Commission to set aside its decisions, reconsiderations and parameters and guidelines in the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 test claims. On July 27, 2005, these decisions and parameters and guidelines were set aside by the Commission with an effective date of July 19, 2005 as required by Statutes 2005, chapter 72. However, the court in *California School Boards Association v. State of California* (2009)² held that “the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside”, and

¹ Parameters and Guidelines for CSM-4257 were first adopted on December 4, 1991 and were amended on November 30, 2000, but those Parameters and Guidelines are no longer effective and so are not relevant to this decision.

² 171 Cal.App.4th 1183, at pp. 1198-1203.

therefore the directive in AB 138 constituted an unconstitutional violation of separation of powers principles.³ The court therefore ordered the Commission to reinstate the test claim decisions and parameters and guidelines. The test claims and parameters and guidelines were therefore reinstated on September 27, 2009.

On November 6, 2012 the voters approved Proposition 30, also known as “The Schools and Local Public Safety Protection Act of 2012.”⁴ Among other changes, Proposition 30 expressly stated that Notwithstanding Section 6 of Article XIII B, or any other constitutional provision... Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission based on a subsequent change in law. The Government Code provides for a two-hearing process. The Commission’s regulations state that “[i]f the commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”⁶

Procedural History

On July 29, 2013, the Department of Finance (Finance) filed a request for redetermination of the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims.⁷ Finance asserts that Proposition 30 “has removed the state’s obligation to fund the mandates.”⁸ The State Controller’s Office (Controller) submitted comments on the request, concurring with Finance’s conclusion that Proposition 30 has removed the state’s obligation to fund the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 programs.⁹ On September 5, 2014, Commission staff issued the draft proposed decision for the first hearing.¹⁰ On September 26, 2014, the Controller submitted comments concurring with the draft proposed decision.¹¹

³ *Id.*, at pp. 1198-1203.

⁴ Exhibit K, Text of Proposition 30, page 2.

⁵ Article XIII, section 36(c)(3) (adopted November 6, 2012).

⁶ Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

⁷ Based on the July 29, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2011.

⁸ Exhibit A, Request for Redetermination, page 1.

⁹ Exhibit E, Controller’s Comments on Request for Redetermination.

¹⁰ Exhibit F, Draft Proposed Decision.

¹¹ Exhibit G, Controller’s Comments on Draft Proposed Decision, First Hearing.

On December 5, 2014 the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim decision.¹² On December 5, 2014, Commission staff issued the draft proposed decision for the second hearing.¹³ On December 22, 2014, the Controller filed comments on the draft proposed decision.¹⁴

Commission Responsibilities

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁵

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.¹⁶

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

¹² Exhibit H, Adopted Decision, First Hearing, issued December 5, 2014.

¹³ Exhibit I, Draft Proposed Decision, Second Hearing.

¹⁴ Exhibit J, Controller's Comments on Draft Proposed Decision, Second Hearing.

¹⁵ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁶ Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Staff Analysis

The issue for this hearing is to what extent the state's liability under the test claim statutes has been modified and whether a new test claim shall be adopted to supersede the prior test claim decision.

Proposition 30, adopted by the voters on November 6, 2012, added article XIII, section 36 to the California Constitution. Section 36(c)(3) provides that:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

The Open Meetings Act and Brown Act Reform test claims found state-mandated increased costs under Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. These code sections are all found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, as described in Section 36(c)(3).

Generally constitutional or statutory provisions should be harmonized if possible, and both article XIII B, section 6, and article XIII, section 36, as amended by Proposition 30, "have equal dignity as constituents of the state Constitution."¹⁷ The Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.¹⁸ However, if it is not possible to reconcile two potentially conflicting provisions, "special provisions control more general provisions, and the general and special provisions operate together, neither working the repeal of the other."¹⁹ In addition, "where two constitutional provisions conflict, the one that was enacted later in time controls."²⁰ Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exemption from the reimbursement requirement of article XIII B, section 6, is presumptively controlling. Article XIII, section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an exemption from the subvention requirement pertaining only to a single chapter of the Government Code.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on July 29, 2013, establishing eligibility beginning July 1, 2012. However, the effective date of article XIII, section 36, is November 7, 2012, the day after the election at which Proposition 30 was approved.²¹ Therefore, as a result of this

¹⁷ *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

¹⁸ California Constitution, article III, section 3.5.

¹⁹ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

²⁰ *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

²¹ See Exhibit K, Text of Proposed Law, section 5.

proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of November 7, 2012.²²

Based on the foregoing, staff finds the *Open Meetings Act/Brown Act Reform* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution, beginning November 7, 2012.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning November 7, 2012.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

²² California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Government Code Sections 54952, 54954.2,
54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes
1993, Chapters 1136; 1137; 1138

As Alleged to be Modified by:

Proposition 30, General Election,
November 6, 2012

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-02

*Open Meetings Act/Brown Act
Reform (CSM-4257/4469)*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500,
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted January 23, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 23, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CSM-4257/4469 mandates has been modified based on a subsequent change in law. Specifically, article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly declared that activities under Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code (commencing with section 54950) "shall not be a reimbursable mandate" under article XIII

B, section 6. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *Open Meetings Act/Brown Act Reform* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution, effective November 7, 2012.²³

COMMISSION FINDINGS

I. Chronology

- | | |
|-----------|---|
| 3/23/1988 | The Commission adopted the statement of decision for the Open Meetings Act test claim (CSM-4257). ²⁴ |
| 6/28/2001 | The Commission adopted the statement of decision for the Brown Act Reform test claim (CSM-4469). ²⁵ |
| 4/25/2002 | The Commission adopted consolidated parameters and guidelines for Open Meetings Act/Brown Act Reform (CSM-4257/4469). ²⁶ |
| 7/19/2005 | The Legislature enacted Statutes 2005, chapter 72 (AB 138), which required the Commission to set aside the test claim decisions and parameters and guidelines in CSM-4257 and CSM-4469. |
| 9/27/2005 | The Commission set aside CSM-4257 and CSM-4469, effective 7/19/2005. ²⁷ |
| 3/9/2009 | The Third District Court of Appeal held that AB 138 violated separation of powers principles, and ordered the Commission to reinstate the prior decisions in CSM-4257 and CSM-4469. ²⁸ |
| 9/25/2009 | The Commission reinstated CSM-4257 and CSM-4469, test claim decisions and parameters and guidelines, pursuant to <i>California School Boards Association v. State of California</i> (2009) 171 Cal.App.4th 1183, effective July 31, 2009. ²⁹ |

²³ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

²⁴ Exhibit B, Test Claim Statement of Decision CSM-4257.

²⁵ Exhibit C, Test Claim Statement of Decision CSM-4469.

²⁶ Exhibit D, Parameters and Guidelines.

²⁷ Exhibit D, Parameters and Guidelines.

²⁸ *California School Boards Association v. State* (2009) 171 Cal.App.4th 1183, at pp. 1198-1218.

²⁹ Exhibit D, Parameters and Guidelines.

11/6/2012	The voters adopted Proposition 30, which added article XIII, section 36 to the California Constitution. ³⁰
7/29/2013	The Department of Finance (Finance) filed a request for redetermination on CSM-4257 and CSM-4469. ³¹
9/9/2013	The Controller submitted comments on the redetermination request. ³²
9/5/2014	Commission staff issued the draft decision for the first hearing. ³³
9/26/2014	The Controller submitted written comments on the draft. ³⁴
12/05/2014	The Commission adopted the decision on the first hearing, finding that Finance made an adequate showing and directed staff to prepare the draft proposed decision for the second hearing.
12/05/2014	Commission staff issued the adopted decision for the first hearing and the draft proposed decision for the second hearing. ³⁵
12/22/2014	The Controller filed comments on the draft proposed decision for the second hearing. ³⁶

II. Background

A. The Open Meetings Act, the Brown Act, and the Alleged Subsequent Change in Law

Statutes 1986, chapter 641 added section 54954.2 to the Government Code, which requires a local agency to post an agenda 72 hours before a regular meeting, describing the items to be discussed at the meeting and specifying the time and place of the meeting. Statutes 1986, chapter 641 also added section 54954.3, which generally requires all regular meetings to provide an opportunity for public comment. The Commission found this statute imposed costs mandated by the state, in CSM-4257.³⁷

Statutes 1993, chapters 1136, 1137, and 1138 added or amended sections 54952, 54954.2, 54957.1, and 54957.7 to the Government Code. The Commission found that this test claim statute enlarged the definition of “legislative bodies” subject to the requirements of section

³⁰ Exhibit K, Text of Ballot Measure, Proposition 30.

³¹ Exhibit A, Request for Redetermination.

³² Exhibit E, Controller’s Comments on the Request for Redetermination.

³³ Exhibit F, Draft Proposed Decision, First Hearing.

³⁴ Exhibit G, Controller’s Comments on the Draft Proposed Decision, First Hearing.

³⁵ Exhibit H, Adopted Decision, First Hearing; Exhibit I, Draft Proposed Decision, Second Hearing.

³⁶ Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing.

³⁷ See Exhibit B, Test Claim Statement of Decision CSM-4257.

54952.2; required closed session items to be listed on a meeting agenda; required the reporting of closed session items after closed session and the provision of closed session documents; and required the disclosure of certain closed session items prior to and after the closed session.³⁸

In the parameters and guidelines for the two test claims, the reimbursable activities are described as follows:

A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting. (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.

³⁸ See Exhibit C, Test Claim Statement of Decision CSM-4469.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
 - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
 - b. 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 consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
 - c. 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. (Gov. Code, § 54957.1, subd. (a)(3).)
 - d. 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 of 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. (Gov. Code, § 54957.1, subd. (a)(4).)
 - e. 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. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a

person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of Brown Act Reform. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).³⁹

Article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly disclaims the existence of any reimbursable state mandate arising from Government Code 54950 et seq. Specifically, Proposition 30 provides that “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code,

³⁹ Exhibit D, Parameters and Guidelines.

with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.”⁴⁰

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.”⁴¹

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁴²

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”⁴³

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”⁴⁴ If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”⁴⁵

⁴⁰ Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

⁴¹ Code of Regulations, Title 2, section 1190.05(a)(1).

⁴² Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

⁴³ California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

⁴⁴ Code of Regulations, Title 2, section 1190.05(b)(1).

⁴⁵ Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

III. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that “[b]y adding Article XIII, Section 36, subdivision (c)(3) to the Constitution, the electorate stated the reimbursable requirements of the Open Meetings Act and Brown Act Reform mandates are no longer reimbursable mandates.”⁴⁶

B. Controller’s Position

The Controller states that it “concurs that Proposition 30 is the subsequent change in law that eliminated reimbursement of state mandated costs” for the Open Meetings Act and Brown Act Reform test claims.⁴⁷ The Controller stated that it has no comments on the draft proposed decision for the second hearing.⁴⁸

IV. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁵⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵¹

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a

⁴⁶ Exhibit A, Request for Redetermination, 13-MR-02, page 8.

⁴⁷ Exhibit E, Controller’s Comments, page 1.

⁴⁸ Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing, page 1.

⁴⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

⁵⁰ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

⁵¹ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.⁵²

A. Proposition 30 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides that a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has altered the state's liability for reimbursement. A subsequent change in law is defined in section 17570 as "[a] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law..."⁵³ Under this definition, then, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) another change in mandates law.

This request for redetermination does not allege a subsequent change in law that requires a finding of a new cost mandated by the state pursuant to section 17514, or a finding that a cost is not mandated by the state pursuant to section 17556. Rather, the request is based on the plain language exception to reimbursement adopted in Proposition 30 and, thus, is alleged as another change in mandates law. Proposition 30, adopted by the voters November 6, 2012, provides, in pertinent part:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵⁴

The test claim statements of decision and parameters and guidelines for CSM-4257 and CSM-4469 found reimbursable activities imposed by Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. Chapter 9, Part 1, Division 2 of title 5 of the Government Code includes sections 54950 through 54963. Therefore, all code sections found to impose activities in test claims CSM-4257 and CSM-4469 are within Chapter 9, and pursuant to Proposition 30, "shall not be a reimbursable mandate..."

Additionally, while amended article XIII, section 36 provides for an exemption from subvention for "a local agency" required to comply with Chapter 9, the chapter itself interprets "local agency" broadly to include school districts. Government Code sections 17518 and 17519, normally controlling in the Commission's analyses, define "local agency" and "school district" separately. And generally, when the Commission identifies both local agencies and school districts together, for purposes of a mandate finding, the preferred usage is "local government."

⁵² Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁵³ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁵⁴ Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

However, Government Code 54951, contained within chapter 9, part 1, Division 2 of title 5 of the Government Code, which Proposition 30 purports to modify, provides that “[a]s used in this chapter, local agency means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” Therefore, section 54951 defines “local agency” more broadly than is usually meant in the Commission’s processes, and article XIII, section 36, as added by Proposition 30, must be interpreted to apply the same definition.

Article XIII, section 36 of the California Constitution as enacted by Proposition 30 effects “a change in mandates law,” in that it directly invokes article XIII B, section 6, and states that a certain chapter of the Government Code, which contains the mandate previously approved by the Commission, cannot impose a reimbursable mandate under section 6. Since Proposition 30 was codified as article XIII, section 36 of the California Constitution, it is on equal footing with article XIII B, section 6, and, being later-enacted, is presumed to take precedence.⁵⁵ In addition, a more specific provision controls over a more general provision. Therefore, to the extent that article XIII, section 36 conflicts with article XIII B, section 6, the former should be treated as an exception to the latter.⁵⁶ The Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.⁵⁷

Based on the foregoing, the Commission found at the first hearing on this redetermination that Proposition 30, adding article XIII, section 36 to the California Constitution, constitutes a subsequent change in law, as defined.⁵⁸

B. Proposition 30 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

Article XIII, section 36 of the California Constitution, added by Proposition 30, adopted November 6, 2012, provides, in pertinent part:

Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services

⁵⁵ *People v. Moody* (Cal. Ct. App. 3d Dist. 2002) 96 Cal.App.4th 987.

⁵⁶ *People v. Superior Court* (2002) 28 Cal.4th 798, at p. 809.

⁵⁷ California Constitution, article III, section 3.5.

⁵⁸ See Exhibit H, First Hearing Decision, page 8.

responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵⁹

As shown above, the Commission has previously found reimbursable state-mandated activities under Government Code sections 54952, 54954.2, 54957.7, and 54957.1.⁶⁰ These sections of the Government Code are found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, which includes sections 54950 through and include 54963. Therefore, the plain language of article XIII, section 36 directly implicates these sections of the Government Code.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.⁶¹ Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 54950-54963.

The California Constitution states that “[a]ll political power is inherent in the people,” and that “[g]overnment is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.”⁶² The California Supreme Court has recognized the supremacy of the electorate as follows: “[t]he people of this state, as the ultimate source of legitimate political power, are of course free through constitutional amendment to adopt whatever changes in the existing system they consider appropriate, subject only to limitations contained in the Constitution of the United States.”⁶³ And the United States Supreme Court has held that the only limitation on the power of a state to alter its constitution is that the government of the state “must be of the Republican form.”⁶⁴

Both articles XIII B, section 6 and XIII, section 36 “have equal dignity, as constituents of the state Constitution.”⁶⁵ The two provisions therefore should be interpreted in a manner that would harmonize their effects, if possible.⁶⁶ If it is not possible to reconcile two potentially conflicting provisions, “special provisions control more general provisions, and the general and special

⁵⁹ California Constitution, article XIII, section 36 (added, Proposition 30, November 6, 2012).

⁶⁰ See Exhibit D, Parameters and Guidelines.

⁶¹ California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

⁶² California Constitution, article II, section 1.

⁶³ *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, at p. 680.

⁶⁴ *Chisholm v. Georgia* (1793) 2U.S. 419, at p. 448.

⁶⁵ *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

⁶⁶ *Ibid.*

provisions operate together, neither working the repeal of the other.⁶⁷ In addition, “where two constitutional provisions conflict, the one that was enacted later in time controls.”⁶⁸

Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exception to the reimbursement requirement of article XIII B, section 6, is presumptively controlling. The two provisions cannot be harmonized, because section 36 creates an express exception for “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code...” from the operation of article XIII B, section 6, as that provision has previously been interpreted by the Commission, and as certain sections of chapter 9 have been previously found to impose a reimbursable state mandate.⁶⁹ However, section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an exception from the subvention requirement pertaining only to a single chapter of the Government Code. Therefore, the general and special provisions can operate together “neither working the repeal of the other,”⁷⁰ and section 36 is presumed to create a valid exception to the reimbursement requirement of article XIII B, section 6.

Based on the foregoing, the Commission finds that the state’s liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

C. The Open Meetings Act/Brown Act Reform Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning November 7, 2012.

Government Code section 17570 provides that a redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”⁷¹ This redetermination request was filed on July 29, 2013, establishing potential eligibility beginning July 1, 2012. However, the subsequent change in law identified was adopted on November 6, 2012, and became effective the following day.⁷² Therefore, the Open Meetings Act/Brown Act Reform program no longer constitutes a reimbursable state-mandated program beginning November 7, 2012.

V. CONCLUSION

Based on the foregoing, the Commission approves the request for redetermination and concludes that the Open Meetings Act/Brown Act Reform program does not constitute a reimbursable

⁶⁷ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

⁶⁸ *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

⁶⁹ See Exhibits A, B, C, Test Claims and Parameters and Guidelines.

⁷⁰ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

⁷¹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁷² California Constitution, article II, section 10.

state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution and, beginning November 7, 2012.