

ITEM 3
TEST CLAIM
PROPOSED DECISION

Education Code Sections 17660, 17661

Statutes 2022, Chapter 777, Sections 1 and 2 (AB 2232), Effective January 1, 2023

Heating, Ventilation, and Air Conditioning (HVAC) Program

23-TC-01

Hesperia Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim alleges new state-mandated activities and costs resulting from Education Code sections 17660 and 17661 as added by Statutes 2022, chapter 777 (the test claim statute), effective January 1, 2023.¹ The test claim statute generally requires school districts to ensure school facilities have HVAC systems meeting the minimum ventilation rate requirements in the Energy Code and to install the highest efficiency MERV filters feasible to “provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.”²

For reasons discussed in the analysis, staff finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and recommends the Commission deny this Test Claim.

Procedural History

The claimant filed the Test Claim on November 17, 2023.³ The Department of Finance (Finance) filed comments on the Test Claim on February 15, 2024.⁴ The claimant filed rebuttal comments on March 14, 2024.⁵

¹ Statutory references are to the Education Code unless otherwise indicated.

² Education Code section 17660 (Stats. 2022, ch. 777).

³ Exhibit A, Test Claim, filed November 17, 2023, page 1.

⁴ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 1.

⁵ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 1.

Commission staff issued the Draft Proposed Decision on September 3, 2024.⁶ The claimant filed comments on the Draft Proposed Decision on September 23, 2024.⁷

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the 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 test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging 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 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁸

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) requires test claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations	<i>Timely filed</i> - The test claim statute became effective on January 1, 2023. ⁹ The Test Claim was filed on November 17, 2023, ¹⁰ within 12 months of the effective date so the test claim was timely filed. The November 17, 2023 filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,

⁶ Exhibit D, Draft Proposed Decision, issued September 3, 2024.

⁷ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024.

⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁹ Statutes 2022, chapter 777.

¹⁰ Exhibit A, Test Claim, filed November 17, 2023, page 1.

Issue	Description	Staff Recommendation
	defines “12 months” as 365 days.	but the potential period of reimbursement begins January 1, 2023 because that is the effective date of the test claim statute.
Does Education Code section 17660 and uncodified section 1, as added by the test claim statute, impose a reimbursable state mandate?	Section 17660 declares “the policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.” ¹¹ Similarly, uncodified section 1 of the test claim statute consists of legislative declarations regarding studies on poor classroom air quality and cites the Education, Labor and Building Codes regarding school responsibilities to ensure air quality.	<i>Deny</i> - Reimbursement under article XIII B, section 6 is only required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. ¹² Section 17660 and section 1 of the test claim statute do not require school districts to perform any activities, so state reimbursement is not required.
Does Education Code section 17661(a), (d), and (e), as added by the test claim statute, impose a reimbursable state mandate?	Section 17661(a) defines “covered school,” “HVAC,” and “MERV,” as used in the test claim statute. Section 17661(d) requires the California Building Standards Commission and the Division of the State Architect to research,	<i>Deny</i> - Reimbursement under article XIII B, section 6 is only required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. ¹³ Section 17661(a), (d), and (e), does not require school

¹¹ Education Code section 17660 (Stats 2022, ch. 777).

¹² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

Issue	Description	Staff Recommendation
	<p>develop, and propose for adoption mandatory standards for carbon dioxide monitors in classrooms on the next triennial update of the California Building Standards Code.</p> <p>Section 17661(e) says the section “shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make it applicable.”</p>	<p>districts to perform any activities, so no state reimbursement is required.</p>
<p>Does Education Code section 17661(b) impose a reimbursable state-mandated program?</p>	<p>Section 17661(b)(1) requires school districts and county offices of education to ensure facilities, including classrooms, have HVAC systems that meet the minimum ventilation rate requirements in Table 120.1-A of part 6 of title 24 of the California Code of Regulations (i.e., Energy Code), unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.</p> <p>Section 17661(b)(2) requires a school incapable of meeting the minimum ventilation rates in Table 120.1-A to ensure its HVAC system meets the minimum ventilation rates in effect when the permit for that HVAC installation was issued; and document the HVAC system’s inability to meet the current ventilation standards in the annual</p>	<p><i>Deny</i> - The requirement in section 17661(b)(2), to inspect the HVAC systems to ensure they meet the minimum ventilation rates <i>in effect when the permit for HVAC installation was issued</i> is not new and does not impose a new program or higher level of service.</p> <p>Although the requirements in sections 17661(b)(1) and (b)(2) to inspect HVAC systems to ensure compliance with the <i>current</i> minimum ventilation rates in Table 120.1-A of the Energy Code and document in the annual inspection report the system’s inability to meet <i>current</i> ventilation standards in Table 120.1-A is new for school districts with HVAC systems approved for installation <i>before</i> January 1, 2020 (under the 2016 or earlier Energy Code), there is no evidence in the record of increased</p>

Issue	Description	Staff Recommendation
	HVAC inspection report required by section 5142 of title 8 of the California Code of Regulations, which shall be available to the public on request.	costs mandated by the state. ¹⁴
Does Education Code section 17661(c) impose a reimbursable state-mandated program?	Under section 17661(c), school districts are required to install MERV 13 air filtration or the highest filtration feasible and appropriate for the existing HVAC system, as determined by the school. Or if the existing HVAC system is not designed to achieve MERV levels of 13 or higher, the school district shall install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.	<p><i>Deny</i> – The MERV 13 requirement in section 17661(c) is <i>not</i> new to the extent a school received a permit to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have MERV 13 or higher filters.¹⁵ Prior law also required these filters be replaced or cleaned regularly.¹⁶</p> <p>In addition, the MERV 13 requirement is <i>not</i> new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more <i>employee</i> cases in an exposed group, as defined, who visited the worksite during their infectious period any time</p>

¹⁴ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 18-19 (Landon Declaration); Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed September 23, 2024; Government Code section 17514.

¹⁵ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

¹⁶ California Code of Regulations, title 8, section 5143(d)(3). (Register 2003, No. 24.)

Issue	Description	Staff Recommendation
		<p>during a 14-day period).¹⁷ Under these circumstances, existing regulations required the school to comply with the same filtration requirements as the test claim statute.¹⁸</p> <p>Therefore, the requirement in section 17661(c) is new only for schools with HVAC systems approved for installation <i>before</i> January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did <i>not</i> have a COVID-19 outbreak as defined in the title 8 regulations.¹⁹ However, there is no evidence of increased costs mandated by the state to comply with the MERV 13 requirement under these circumstances.²⁰</p>

Staff Analysis

The test claim statute, effective January 1, 2023, seeks to further the “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”²¹ To do this, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’

¹⁷ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

¹⁸ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

¹⁹ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

²⁰ Government Code section 17514, California Code of Regulations, title 2, section 1183.1.

²¹ Education Code section 17660 (Stats 2022, ch. 777).

(defined as “a school district, a county office of education, a charter school, a private school, the California Community Colleges, or the California State University”)²² to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.²³

Part 6 of the title 24 regulations refers to the Energy Code adopted by the California Energy Commission.²⁴ Part 6 contains energy conservation standards applicable to nonresidential government buildings throughout California with HVAC systems, including schools and community colleges.²⁵ Table 120.1-A of the Energy Code governs the “Minimum Ventilation Rates” for HVAC systems in various types of classrooms (and science labs and art rooms). Table 120.1-A identifies standards for the total outdoor air rate, the minimum ventilation rates for systems with DCV (demand

²² Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.) Thus, this Decision applies to K-12 school districts and county offices of education, referred to as “school districts.”

The definition of “covered schools” in section 17661(a)(1) also includes the California Community Colleges. A test claim has not been filed by a community college district. Therefore, the Commission makes no findings with respect to community college districts.

²³ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

²⁴ Health and Safety Code section 18942(a).

²⁵ California Code of Regulations, title 24, part 6, section 100(a). Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%206%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges> (accessed September 25, 2024), page 2. Public Resources Code section 25488.

control ventilation) devices, and the air class, which is a measure of air quality in “educational facilities,” including classrooms.²⁶

If a school’s existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of the Energy Code, then the school district is required to:

[E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued [and;]

[D]ocument the HVAC system’s inability to meet the current ventilation standards set forth in paragraph (1) (i.e., in the current version of Table 120.1-A of Part 6 of Title 24) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.²⁷

A covered school is also required to:

[I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.

If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.²⁸

The Test Claim was timely filed on November 17, 2023.²⁹ This filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,³⁰ but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

Staff finds Education Code sections 17660 (the Legislature’s findings and declarations) and 17661(a), (d), and (e), as well as uncoded section 1 of the test claim statute, impose no requirements on school districts so they do not constitute a state-mandated program.

²⁶ California Code of Regulations, title 24, part 6, Table 120.1-A.

²⁷ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

²⁸ Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal.Code Regs., tit. 23, pt. 6, § 100.1(b)).

²⁹ Exhibit A, Test Claim, filed November 17, 2023, page 1.

³⁰ Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

Staff finds Education Code section 17661(b) does not impose a reimbursable state-mandated program for the following reasons:

- The requirement in section 17661(b)(2), requiring a school to inspect to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service. Since 1987, section 5142(b) of the title 8 regulations has required employers, including school districts, to conduct annual workplace HVAC inspections to ensure compliance with the minimum ventilation rate requirements in effect when the installation permit was issued, with inspections and maintenance documented in writing.³¹
- The requirements in section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022,³² and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of the title 8 regulations, are *not* new and do not impose a new program or higher level of service for school districts that received a permit for HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved on or after January 1, 2020).

Under existing law, schools were already required to conduct annual inspections to ensure the HVAC systems provide “at least the quantity of outdoor air required by . . . Title 24, . . . in effect at the time the building permit was issued” and to document that inspection in writing.³³ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new.³⁴

- The requirements in section 17661(b)(1) and (2) to ensure compliance with *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as

³¹ California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .” See also, the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, which require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems. (Ed. Code §§ 17002(d)(1)(B), 17014(c), 17075(a), 17070.77(a)-(b); Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).)

³² California Code of Regulations, title 24, part 6, Table 120.1-A.

³³ California Code of Regulations, title 8, section 5142. Emphasis added.

³⁴ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

amended in 2022, and to document the HVAC system's inability to meet the *current* ventilation standards in the annual HVAC inspection report required by section 5142 of the title 8 regulations is new for schools that received a permit for an HVAC installation under the 2016 or earlier Energy Code (i.e., *before* January 1, 2020).³⁵ However, the claimant has not requested reimbursement to comply with section 17661(b)(1) and (2) and there is no evidence in the record school districts incurred any costs mandated by the state to comply with these requirements.³⁶

Staff further finds reimbursement is not required to comply with Education Code section 17661(c), which requires school districts to install MERV 13 or the highest filtration the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system. The 2016 Energy Code did not require filters rated at MERV 13 or higher.³⁷ The 2019 amendment to the Energy Code (eff. Jan. 1, 2020) set the minimum requirement to MERV 13.³⁸ However, reimbursement under article XIII B, section 6 is not required because:

- The MERV 13 requirement section 17661(c) is *not* new to the extent a school received a permit to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have MERV 13 or higher filters.³⁹ Prior law also required filters be replaced or cleaned regularly.⁴⁰
- In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).⁴¹ Under these circumstances, existing regulations

³⁵ Exhibit F (4), California Energy Commission, 2016 Nonresidential Compliance Manual, Chapter 4, page 4-45; Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 101.

³⁶ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

³⁷ Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

³⁸ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

³⁹ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁴⁰ California Code of Regulations, title 8, section 5143(d)(3) (Register 2003, No. 24).

⁴¹ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

required the school to comply with the same filtration requirement as the test claim statute.⁴²

- Therefore, the MERV 13 requirement in section 17661(c) is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in the title 8 regulations.⁴³ Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often than every three months,⁴⁴ section 17661(c) imposes a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the efficiency level.⁴⁵ On-going filter purchase and installation is not new.⁴⁶

However, there is no evidence of increased costs mandated by the state to comply with the newly-mandated activity, as required by law.⁴⁷ The Test Claim does not acknowledge any prior requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead, the Test Claim alleges increased costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, to install MERV 13 filters in *all* of its schools' HVAC systems since January 1, 2023.⁴⁸

⁴² California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

⁴³ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

⁴⁴ Exhibit A, Test Claim, filed November 17, 2023, page 13.

⁴⁵ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24).

⁴⁶ Even if purchasing and installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates* (Kern High School Dist.) (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

⁴⁷ Government Code section 17514, California Code of Regulations, title 2, section 1183.1(e).

⁴⁸ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 14, 18-19 (Landon Declaration); Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration); Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

The Declaration submitted with the Test Claim also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters.⁴⁹ This evidence shows the claimant has schools *not* subject to the newly mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have MERV 13 or higher filters.⁵⁰

There is *no* evidence in the record of any costs mandated by the state to perform the one-time activity to install MERV 13 or higher filtration or install filtration that achieves the highest feasible MERV level without significantly reducing the lifespan or performance of the existing HVAC system, in schools that have HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in the title 8 regulations.⁵¹

Conclusion

Staff finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Staff Recommendation

Staff recommends the Commission adopt the Proposed Decision to deny the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

⁴⁹ Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

⁵⁰ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁵¹ California Code of Regulations, title 8, section 3205.1.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Education Code Sections 17660, 17661
Statutes 2022, Chapter 777, Sections 1
and 2 (AB 2232), Effective
January 1, 2023
Filed on November 17, 2023
Hesperia Unified School District, Claimant

Case No.: 23-TC-01

*Heating, Ventilation, and Air Conditioning
(HVAC) Program*

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

(Adopted November 22, 2024)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on November 22, 2024. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Shannon Clark, Representative of the Director of the Office of Planning and Research	
Deborah Gallegos, Representative of the State Controller	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”⁵² To do this, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined to include school districts and county offices of education) to:⁵³

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC [defined as heating, ventilation, and air conditioning] systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.⁵⁴

Part 6 of the title 24 regulations refers to the Energy Code adopted by the California Energy Commission.⁵⁵ Part 6 contains energy conservation standards applicable to nonresidential government buildings throughout California with HVAC systems, including schools and community colleges.⁵⁶ Table 120.1-A of the Energy Code governs the “Minimum Ventilation Rates” for HVAC systems in various types of classrooms and science labs and art rooms. Table 120.1-A identifies standards for the total outdoor air rate, the minimum ventilation rates for systems with DCV (demand control ventilation) devices, and the air class, which is a measure of air quality.⁵⁷

If a school’s existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of the Energy Code, then the school district is required to:

⁵² Education Code section 17660 (Stats 2022, ch. 777).

⁵³ Statutory references are to the Education Code unless otherwise indicated.

⁵⁴ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

⁵⁵ Health and Safety Code section 18942(a).

⁵⁶ California Code of Regulations, title 24, part 6, section 100(a). Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%206%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges> (accessed September 25, 2024), page 2. Public Resources Code section 25488.

⁵⁷ California Code of Regulations, title 24, part 6, Table 120.1-A.

[E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued . . . [and;];

[D]ocument the HVAC system's inability to meet the current ventilation standards set forth in paragraph (1) [i.e., in the current version of Table 120.1-A of Part 6 of Title 24] in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.⁵⁸

A covered school is also required to:

[I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.

If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.⁵⁹

The test claim was timely filed on November 17, 2023.⁶⁰ This filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,⁶¹ but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

The Commission finds sections 17660 (the Legislature's findings and declarations) and 17661(a), (d), and (e), as well as uncoded section 1 of the test claim statute, impose no requirements on school districts so they do not constitute a state-mandated program.

The Commission further finds section 17661(b) does not impose a reimbursable state-mandated program because:

- The requirement in section 17661(b)(2), requiring a school to inspect to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service. Since 1987, section 5142(b) of the title 8 regulations has required employers, including school

⁵⁸ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

⁵⁹ Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b).)

⁶⁰ Exhibit A, Test Claim, filed November 17, 2023, page 1.

⁶¹ Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

districts, to conduct annual workplace HVAC inspections to ensure compliance with the minimum ventilation rate requirements in effect when the installation permit was issued, with inspections and maintenance documented in writing.⁶²

- The requirements in section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the system's inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of the title 8 regulations, are *not* new and do not impose a new program or higher level of service for school districts that received a permit for HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved on or after January 1, 2020).

Under existing law, schools were already required to conduct annual inspections to ensure the HVAC systems provide “at least the quantity of outdoor air required by . . . Title 24, . . . in effect at the time the building permit was issued” and to document that inspection in writing.⁶³ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new.⁶⁴

- The requirements in section 17661(b)(1) and (2) to ensure compliance with *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the HVAC system's inability to meet the *current* ventilation standards in the annual HVAC inspection report required by section 5142 of the title 8 regulations is new for schools that received a permit for an HVAC installation under the 2016 or earlier Energy Code (i.e., *before* January 1, 2020).⁶⁵ However, the claimant has not requested reimbursement to comply with section 17661(b)(1) and (2) and there is no evidence in the record

⁶² California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .” See also, the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, which require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems. (Ed. Code §§ 17002(d)(1)(B), 17014(c), 17075(a), 17070.77(a)-(b); Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).

⁶³ California Code of Regulations, title 8, section 5142. Emphasis added.

⁶⁴ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

⁶⁵ Exhibit F (4), California Energy Commission, 2016 Nonresidential Compliance Manual, Chapter 4, page 4-45; Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 101.

school districts incurred any costs mandated by the state to comply with these requirements.⁶⁶

The Commission further finds reimbursement is not required to comply with section 17661(c), which requires school districts to install MERV 13 or the highest filtration the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system. The 2016 Energy Code did not require filters rated at MERV 13 or higher.⁶⁷ The 2019 amendment to the Energy Code (eff. Jan. 1, 2020) set the minimum requirement to MERV 13.⁶⁸ However, reimbursement under article XIII B, section 6 is not required because:

- The MERV 13 requirement is *not* new to the extent a school received a permit to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have MERV 13 or higher filters.⁶⁹ Prior law also required filters be replaced or cleaned regularly.⁷⁰
- In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).⁷¹ Under these circumstances, existing regulations required the school to comply with the same filtration requirement as the test claim statute.⁷²
- Therefore, the MERV 13 requirement in section 17661(c) is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a

⁶⁶ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

⁶⁷ Exhibit X (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

⁶⁸ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

⁶⁹ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁷⁰ California Code of Regulations, title 8, section 5143(d)(3) (Register 2003, No. 24).

⁷¹ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

⁷² California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

COVID-19 outbreak as defined in the title 8 regulations.⁷³ Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often than every three months,⁷⁴ section 17661(c) imposes a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the efficiency level.⁷⁵ On-going filter purchase and installation is not new.⁷⁶

However, there is no evidence of increased costs mandated by the state to comply with the new mandated activity, as required by law.⁷⁷ The Test Claim does not acknowledge any prior requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead, the Test Claim alleges costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, to install MERV 13 filters in *all* of its schools' HVAC systems since January 1, 2023.⁷⁸

The Declaration submitted with the Test Claim also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters.⁷⁹ This evidence shows the claimant has schools *not* subject to the new

⁷³ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

⁷⁴ Exhibit A, Test Claim, filed November 17, 2023, page 13.

⁷⁵ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24).

⁷⁶ Even if purchasing and installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

⁷⁷ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

⁷⁸ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 14, 18-19 (Landon Declaration); Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration); Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

⁷⁹ Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have MERV 13 or higher filters.⁸⁰

There is *no* evidence in the record of any increased costs mandated by the state to perform the one-time activity to install MERV 13 or higher filtration or install filtration that achieves the highest feasible MERV level without significantly reducing the lifespan or performance of the existing HVAC system, in schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations.⁸¹ The Commission cannot make a finding of costs mandated by the state without evidence in the record.⁸²

Accordingly, the Commission finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

09/29/2022	Statutes 2022, chapter 777 was enacted.
11/17/2023	The claimant filed the Test Claim. ⁸³
02/15/2024	The Department of Finance (Finance) filed comments on the Test Claim. ⁸⁴
03/14/2024	The claimant filed rebuttal comments. ⁸⁵
09/03/2024	Commission staff issued the Draft Proposed Decision. ⁸⁶

⁸⁰ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁸¹ California Code of Regulations, title 8, section 3205.1.

⁸² Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

⁸³ Exhibit A, Test Claim, filed November 17, 2023.

⁸⁴ Exhibit B, Finance Comments, filed February 15, 2024.

⁸⁵ Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024.

⁸⁶ Exhibit D, Draft Proposed Decision, issued September 3, 2024.

II. Background

A. The Test Claim Statute (Stats. 2022, ch. 777)

The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”⁸⁸

In doing so, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined as “a school district, a county office of education, a charter school, a private school, the California Community Colleges, or the California State University”)⁸⁹ to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.⁹⁰

⁸⁷ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024.

⁸⁸ Education Code section 17660 (Stats 2022, ch. 777).

⁸⁹ Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.) Thus, this Decision applies to K-12 school districts and county offices of education, referred to as “school districts.”

The definition of “covered schools” in section 17661(a)(1) also includes the California Community Colleges. A test claim has not been filed by a community college district. Therefore, the Commission makes no findings with respect to community college districts.

⁹⁰ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

If a school's existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of part 6 (commencing with section 100.0) of title 24 of the California Code of Regulations, then the district is required to:

[E]nsure its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued . . . [and;]

[D]ocument the HVAC system's inability to meet the current ventilation standards set forth in paragraph (1) (i.e., in the current version of Table 120.1-A of Part 6 of Title 24) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.⁹¹

A covered school is also required by section 17661(c) to:

- [I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school
- If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.⁹²

Finally, the test claim statute requires the California Building Standards Commission and the Division of the State Architect to research, develop, and propose for adoption mandatory standards for carbon dioxide monitors in classrooms of a covered school and the University of California on the next triennial update of the California Building Standards Code (title 24 of the California Code of Regulations).⁹³

The test claim statute was enacted because “despite “laws requiring schools to maintain functional HVAC systems to supply adequate ventilation and safe indoor air quality, poor indoor air quality remains an extensive problem.”⁹⁴ As described in the statute's legislative findings and declarations below, studies and reports indicate the minimum ventilation rates in classrooms were not being met:

⁹¹ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

⁹² Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b)).

⁹³ Education Code section 17661(d) (Stats 2022, ch. 777).

⁹⁴ Exhibit F (11), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 2232, as amended June 28, 2022, page 3.

- (b) In November 2003, the State Air Resources Board and the State Department of Health Care Services issued a report to the Legislature detailing the adverse impact that poor indoor air quality is having on California schools. The report found significant indoor air quality problems, including problems with ventilation, temperature, humidity, air pollutants, floor dust contaminants, moisture, mold, noise, and lighting. The report found that ventilation with outdoor air was inadequate during 40 percent of classroom hours and seriously deficient during 10 percent of classroom hours in both portable classrooms and traditional classrooms.
- (c) In February 2005, the State Air Resources Board approved an indoor air quality report that cites proven health and economic benefits to reducing indoor air pollution, which is estimated to cost California \$45 billion per year. The report noted that children are particularly vulnerable to poor indoor air quality. According to the report, children under 12 years of age spend about 86 percent of their time indoors with 21 percent of the time being spent in schools.
- (d) A 2019 report by the University of California, Davis, Western Cooling Efficiency Center and the Indoor Environment Group of the Lawrence Berkeley National Laboratory identifies numerous studies finding that underventilation of classrooms is common and negatively impacts student health and learning. Improved heating, ventilation, and air conditioning (HVAC) system performance improves student and teacher health and attendance, student productivity, and the performance of mental tasks, such as better concentration and recall. The report found that students in classrooms with higher ventilation rates have a significantly higher percentage of students—13 to 14 percent—scoring satisfactorily on mathematics and reading tests than students in classrooms with lower outdoor air ventilation rates.
- (e) A 2018 report in the *Environment International Journal* found that short-term carbon dioxide exposure beginning at 1,000 parts per million (ppm) negatively affects cognitive performances, including decisionmaking and problem resolution. The Wisconsin Department of Health Services states that carbon dioxide levels between 1,000 and 2,000 ppm are associated with drowsiness and attention issues. Carbon dioxide levels above 2,000 ppm affect concentration and cause headaches, increased heart rate, and nausea.
- (f) The California Building Energy Efficiency Standards set minimum ventilation rates for classrooms. Sections 17002 and 17070.75 of the Education Code require school districts to ensure schools are maintained in good repair, including HVAC systems that are functional, supply adequate ventilation to classrooms, and maintain interior temperatures within acceptable ranges. Regulations adopted pursuant to Section 142.3 of the Labor Code require that HVAC systems be

maintained and operated to provide at least the quantity of outdoor air required by the California Building Standards Code (Title 24 of the California Code of Regulations) in effect at the time the building permit was issued. Despite these requirements, poorly performing HVAC systems and underventilation of classrooms continue to be a significant problem in California.

- (g) The 2019 report by the University of California, Davis, Western Cooling Efficiency Center and the Indoor Environment Group of the Lawrence Berkeley National Laboratory found that over one-half of new HVAC systems in schools had significant problems within three years of installation and that the vast majority of classrooms in California, including 95 percent of the classrooms studied in the central valley, continue to fail to meet minimum ventilation rates. Some classrooms were found to have carbon dioxide concentrations above 2,000 ppm for substantial periods of the day. The study recommended periodic testing of HVAC systems and continuous real-time carbon dioxide monitoring to detect and correct these problems.
- (h) Monitoring levels of carbon dioxide in classrooms will help ensure that California students' school environment is healthy and conducive to learning and performing well on tests.
- (i) A March 2021 study found that proper ventilation in classrooms could reduce COVID-19 infection risk by over 80 percent compared to classrooms without ventilation.
- (j) The Centers for Disease Control and Prevention and the American Society of Heating, Refrigerating and Air-Conditioning Engineers recommend that schools, buildings, and homes combine filters and air cleaners to achieve minimum efficiency reporting values (MERV) levels of performance for air cleaning of 13 or higher.⁹⁵

The legislative history indicates compliance with the test claim statute would result in “unknown potentially significant costs for school districts . . . to inspect and ensure that their HVAC systems meet the minimum ventilation rate requirements” and “it is unclear how many school . . . districts statewide need to install new filtration as a result of the inspections.”⁹⁶

⁹⁵ Statutes 2022, chapter 777, section 1 (AB 2232). Exhibit A, Test Claim, filed November 17, 2023, pages 99-100.

⁹⁶ Exhibit F (10), Senate Appropriations Committee, Analysis of AB 2232, as amended June 28, 2022, page 1.

B. Existing Law Requires School District HVAC Systems to Be Maintained and Operated to Provide at Least the Quantity of Outdoor Air Required by Title 24 in Effect When the HVAC Installation Permit Was Issued.

Existing law provides “On or after January 1, 1979, no governmental agency shall commence construction on any new structure unless the new structure complies with Title 24 Standards.”⁹⁷ The test claim statute incorporates by reference a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations.”⁹⁸ Part 6 of the title 24 regulations refers to the Energy Code adopted by the California Energy Commission which, like all parts of the building regulations in title 24, is revised and published every three years.⁹⁹ Part 6 contains energy conservation standards applicable to all residential and nonresidential buildings throughout California, including schools and community colleges.¹⁰⁰ All of the indoor air quality regulations in part 6 apply to new construction, alterations, and repairs of existing buildings.¹⁰¹ The Code also contains an enforcement provision requiring a building inspection agency “shall not issue a building permit for any construction unless the enforcement agency determines in writing that the construction is designed to comply with the requirements of Part 6 that are in effect on the date the building permit was applied for.”¹⁰²

Table 120.1-A of part 6, (commencing with section 100.0) of the title 24 regulations establishes minimum HVAC system ventilation rates for nonresidential buildings, including schools.¹⁰³ For public schools, the State’s Division of State Architect in the

⁹⁷ Public Resources Code section 25493; Education Code section 17280(a).

⁹⁸ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The reference is to table 120.1-A of part 6, commencing with section 100.0) of the title 24 regulations, which establishes minimum outside air ventilation rates for HVAC systems and filtering requirements for nonresidential buildings, including schools.

⁹⁹ Health and Safety Code section 18942(a).

¹⁰⁰ California Code of Regulations, title 24, Part 6, section 100(a). See also Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%206%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges> (accessed September 25, 2024), page 2; Public Resources Code section 25488.

¹⁰¹ California Code of Regulations, title 24, Part 6, sections 120, 141.

¹⁰² California Code of Regulations, title 24, Part 1, section 10-103(d)(1).

¹⁰³ California Code of Regulations, title 24, part 6, section 100(a). Public Resources Code section 25488; Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%206%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges>

Department of General Services is the enforcement agency supervising the design and construction of school buildings to ensure compliance with title 24, including inspections during installation.¹⁰⁴

The test claim statute also references “regulations adopted pursuant to Section 142.3 of the Labor Code.”¹⁰⁵ These are Cal/OSHA regulations in title 8 of the California Code of Regulations that impose General Industry Safety Orders (GISOs) on employers, including school districts.¹⁰⁶ Since 1987, section 5142 of title 8 has required workplace HVAC systems to be maintained and operated to provide at least the quantity of outdoor air required by title 24 in effect when the building permit was issued, and requires the HVAC systems be inspected at least annually and any problems found be corrected within a reasonable time.¹⁰⁷ The employer is required to document in writing the name of the individual inspecting or maintaining the system, the date of the inspection or maintenance or both, and the specific findings and actions taken. The records shall be retained for at least five years and made available for examination and copying within 48 hours of a request to the Division of Occupational Safety and Health, any employee of the employer, and to any designated representative of employees.¹⁰⁸

And as more fully explained below, as a condition of receiving funds for new construction or modernization projects under the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, schools are required to keep facilities in good repair, including HVAC systems that are functional and unobstructed, supply adequate ventilation to classrooms, and maintain interior temperatures within acceptable ranges.¹⁰⁹

Finally, during the COVID-19 pandemic, the Legislature enacted the School Energy Efficiency Stimulus Program,¹¹⁰ which includes the School Reopening Ventilation and

[Code#:~:text=PART%20%2D%20CALIFORNIA%20ENERGY%20CODE,includin g%20schools%20and%20community%20colleges](#) (accessed September 25, 2024), page 2.

¹⁰⁴ Education Code section 17280(a) references the Department of General Services that is over the Division of State Architect. *Hall v. City of Taft* (1956) 47 Cal.2d, 177. Regarding inspections, see Education Code sections 17311(a), 17280; See also California Code of Regulations, title 21, section 2.

¹⁰⁵ Statutes 2022, chapter 777, section 1(f).

¹⁰⁶ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300). Labor Code section 142.3 authorizes adoption of “safety and health standards” published in title 8 (see Labor Code, § 142.3(a)(1), (a)(4)(D)).

¹⁰⁷ California Code of Regulations, title 8, section 5142(a)(1), (b).

¹⁰⁸ California Code of Regulations, title 8, section 5142(b).

¹⁰⁹ Education Code sections 17002, 17070.75.

¹¹⁰ Public Utilities Code section 1600 et seq. (AB 841, Stats. 2020, ch. 372).

Energy Efficiency Verification and Repair Program (SRVEVR).¹¹¹ This Energy Commission grant program uses ratepayer-funded energy efficiency incentives to fund HVAC upgrades for school districts.¹¹² School districts that receive grants must, among other requirements, install filtration of MERV 13 or higher where feasible, and have qualified testing personnel review system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting the equipment, replace or upgrade filters where needed, and verify that those filters are installed correctly.¹¹³ Also, qualified testing personnel must verify the ventilation rates in the classrooms, auditoriums, gymnasiums, nurses offices, restrooms, and other occupied areas to assess whether they meet the minimum ventilation rate requirements in Table 120.1-A of the Energy Code in accordance with specific assessment criteria.¹¹⁴ If the HVAC system does not meet the minimum ventilation rates in Table 120.1-A, a licensed professional or qualified adjusting personnel shall review the system airflow and capacity to determine if additional ventilation can be provided without adversely impacting equipment performance and building indoor environmental quality. If additional ventilation can be provided, a qualified adjusting personnel shall adjust ventilation rates to meet the minimum ventilation rate requirements in Table 120.1-A to the extent feasible. If these minimum ventilation rates cannot be met, the deficiency shall be reported in the assessment report addressed by a licensed professional as required.¹¹⁵ Upon completion of grant-funded work under the SRVEVR, the district must prepare an HVAC verification report.¹¹⁶ The School Energy Efficiency Stimulus Program and SRVEVR Program are repealed as of January 1, 2027.¹¹⁷

In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools, which can be used for HVAC improvements.¹¹⁸

¹¹¹ Public Utilities Code section 1620 et seq. SRVEVR is the acronym defined in the bill. See Public Utilities Code section 1601(b) (Stats. 2020, ch. 372).

¹¹² The statute uses “local educational agency” but defines it as school districts, charter schools granted charters pursuant to Part 26.8 of the Education Code, and regional occupation centers established under section 52301 of the Education Code. Public Utilities Code section 1601(a) (Stats. 2020, ch. 372).

¹¹³ Public Utilities Code section 1623(a)(1) (Stats. 2020, ch. 372).

¹¹⁴ Public Utilities Code section 1623(b)(1) (Stats. 2020, ch. 372).

¹¹⁵ Public Utilities Code section 1623(b)(2) (Stats. 2020, ch. 372). The assessment report requirements are in section 1626.

¹¹⁶ Public Utilities Code section 1627 (Stats. 2020, ch. 372).

¹¹⁷ Public Utilities Code section 1640 (Stats. 2020, ch. 372).

¹¹⁸ Public Law No. 116-136 (Mar. 27, 2020) 134 Stat. 281.

III. Positions of the Parties

A. Hesperia Unified School District

The claimant maintains the test claim statute imposes a reimbursable state mandate. According to the Test Claim:

Claimant incurred new activities and costs to ensure that facilities have heating, ventilation, and air conditioning (HVAC) systems that meet specified minimum ventilation rate requirements, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate, in which to ensure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued. Additionally, schools are required to install filtration that achieves specified minimum efficiency reporting values (MERV) levels, determined by the school to be feasible with the existing HVAC system, as provided. The new activities and costs incurred by the Claimant includes the purchasing and installation of new filters¹¹⁹

The claimant alleges the test claim statute requires schools to provide a healthy indoor environment by requiring their HVAC systems meet “the minimum ventilation rate requirements” unless the system is incapable of safely and efficiently providing the minimum ventilation rate.¹²⁰ According to the claimant, “To achieve this requirement Claimant is required to perform the new activity to install filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.”¹²¹ The claimant describes the process to replace its MERV 9 air filters with new MERV 13 air filters, which the claimant alleges are more difficult to store, have a shorter life span, require the indoor coil to be cleaned more frequently, and require more maintenance and higher labor costs than its former filters.¹²²

The claimant argues the required activities are new and “the good repair, working order, and condition[al] requirements of the Leroy F. Greene School Facilities Act of 1998 and its predecessor program” do not include the test claim statute’s requirement for public schools to install MERV 13 filtration or filtration the school determines to be feasible with the existing HVAC system.¹²³

The claimant alleges its increased costs exceed the \$1,000 minimum amount specified in Government Code section 17564(a). The claimant also states there is “no evidence

¹¹⁹ Exhibit A, Test Claim, filed November 17, 2023, pages 7, 18 (Landon Declaration).

¹²⁰ Exhibit A, Test Claim, filed November 17, 2023, pages 11-13.

¹²¹ Exhibit A, Test Claim, filed November 17, 2023, page 13.

¹²² Exhibit A, Test Claim, filed November 17, 2023, pages 13, 18-19 (Landon Declaration).

¹²³ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 3.

that additional on-going revenue has been appropriated” to fund the costs of the mandated activities, so Government Code section 17556(e) does not apply.¹²⁴

In addition to listing the following labor and filter costs, the claimant alleges it hired two employees to replace and install the MERV 13 air filters every three months:¹²⁵

Year	Costs
January 1, 2023, to June 30, 2023	\$27,443.12 labor to install filters \$66,236.22, for MERV 13 filters. ¹²⁶
July 1, 2023, to June 30, 2024	\$81,669.06 estimated labor to install filters \$100,119.04 estimated for MERV 13 filters ¹²⁷
July 1, 2024, to June 30, 2025	\$120,624.56 estimated labor to install filters \$151,920.32 estimated for MERV 13 filters. ¹²⁸

The claimant also estimates statewide costs of \$10 million.¹²⁹

In rebuttal comments, the claimant notes it provided documented evidence with the test claim supporting the labor hours needed to replace the MERV 13 filters.¹³⁰ Further, the claimant asserts it provided documentation showing it has 22 school sites with 830 rooftop HVAC units and 614 wall (portable) HVAC units and it submitted work orders (duty statements) for the employee positions to install and replace the MERV filters, and its Ventilation Maintenance Policy and Procedure and checklist for Indoor Air Quality.¹³¹

Regarding available funds, the claimant cites the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant admits receiving ESSER II funds of \$26,295,815 distributed from June 2021 to August 2023, to use towards the districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools.¹³² Prior to January 1, 2023, ESSER funds were

¹²⁴ Exhibit A, Test Claim, filed November 17, 2023, page 9.

¹²⁵ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration). In rebuttal comments, the claimant states it replaces its HVAC rooftop units every six months and portable wall units every three months. Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

¹²⁶ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

¹²⁷ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

¹²⁸ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

¹²⁹ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 21 (Landon Declaration).

¹³⁰ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 2.

¹³¹ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 3.

¹³² Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

used to purchase MERV 13 filters for new HVAC systems.¹³³ The claimant states it also received ESSER III funds of \$58,852,535, of which it allocated \$13 million to the districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools, with the difference due to having other spending priorities for the remaining ESSER III funds.¹³⁴ The claimant says it has until September 30, 2024, to spend this allocation, and there will be no additional ESSER funds.¹³⁵ The claimant identifies no other state or federal funds, or offsetting fee authority, available for this program, and states its “General funds are the funding sources for the purchasing of the MERV 13 costs and labor from January 1, 2023, to June 30, 2023, and in Fiscal Years 2023-2024 and 2024-2025.”¹³⁶

The claimant also points out Finance submitted no evidence supporting its concerns with the costs identified in the Test Claim, and Finance failed to submit its representations of fact under oath or affirmation and signed under penalty of perjury, as required by the Commission’s regulations.¹³⁷

In comments on the Draft Proposed Decision, the claimant agrees that sections 17660, 17661(a),(d), and (e), and uncoded section 1 of the test claim statute do not impose a reimbursable mandate because they do not require school districts to perform activities.¹³⁸ But the claimant maintains that “it was not until AB 2232 [the test claim statute] that California schools were explicitly required to install MERV 13 or higher filters in their HVAC systems. AB 2232 set new ventilation standards and formalized the requirement for MERV 13 filters to be used.”¹³⁹ The claimant also argues that the requirements in section 120.1 of the Energy Code (including Table 120.1-A) did not

¹³³ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

¹³⁴ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

¹³⁵ Exhibit A, Test Claim, filed November 17, 2023, pages 15-16, 20 (Landon Declaration).

¹³⁶ Exhibit A, Test Claim, filed November 17, 2023, pages 15-16, 20 (Landon Declaration).

¹³⁷ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, pages 3-4. Section 1183.1(e) of the Commission’s regulations requires “[a]ll representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the Commission’s regulations.” However, the determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹³⁸ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 2.

¹³⁹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 2.

apply to schools before the test claim statute.¹⁴⁰ Regarding the title 8 occupational safety regulations, the claimant states:

Title 8 of the California Code of Regulations generally deals with workplace safety, governed by Cal/OSHA (California Occupational Safety and Health Administration). Section 3205, along with its subsections like 3205.1 requirements due to the COVID-19 Outbreaks to install MERV 13 filters sunsets on February 3, 2025 [citation omitted]. Claimant will continue to be required to comply with the requirements of Education Code Section 17661(c).¹⁴¹

With its comments, and in light of the Draft Proposed Decision, the claimant files a “declaration supporting the initial (one-time) costs incurred by the claimant for the purchase and installation of the MERV 13 filters” from the claimant’s Deputy Superintendent, Business Services.¹⁴² The declaration repeats most of that person’s declaration filed with the Test Claim, but specifically identifies the following one-time labor and material costs to install MERV 13 filters:

6. I have submitted documentation (HV AC 105-HV AC 106) stating the following: List of District Schools (22); Total Units (830); Total Roof Tops Replaced (815); Total Roof Tops Not Replaced (15); Total Wall Mounts (614); Total Wall Units Replaced (517); Total Roof Tops Not Replaced (97).
7. The Claimant first incurred increased one-time labor costs to replace and install the MERV 13 air filters on about January 1, 2023 in the amount of **\$18,681.16**. (Assembly Bill No. 2232, Statutes 2022, Chapter 777, Section 2, Education Code Section 17661 (c)(1)).
8. The Claimant first incurred increased one-time costs on about January 1, 2023 for purchasing the MERV 13 air filters in the amount of **\$16,559.06**. (Assembly Bill No. 2232, Statutes 2022, Chapter 777, Section 2, Education Code Section 17661(c)(l)).
9. The Claimant's General funds are the funding sources for the initial purchasing of the MERV 13 air filter costs and the labor of replacing and installing the MERV 13 air filters.¹⁴³

¹⁴⁰ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, pages 3-4.

¹⁴¹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 4.

¹⁴² Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 2.

¹⁴³ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

B. Department of Finance

Finance states “to the extent that AB 2232 establishes new responsibilities, it appears that activities and claimed costs are overstated in the test claim.”¹⁴⁴ Finance notes the test claim statute does not require schools to hire additional staff and the claimant must provide sufficient justification for those costs. And it is unclear if the additional staff would be responsible for duties unrelated to the test claim statute, especially when four established positions already cover HVAC maintenance.¹⁴⁵ Further, schools that opt to receive school construction funds under the Leroy F. Greene School Facilities Act or its predecessor are already required to keep facilities at all times in good repair. Finance states the claimant should provide the following information to justify the claimed costs:

- Documented evidence of the labor hours needed to replace the MERV 13 filter, which would be part of the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations.
- The total number of HVAC systems within its district.
- Duty Statements for the existing positions and the two additional positions that highlight any extra duties these positions are expected to perform, in addition to maintaining the MERV 13 filters.
- Documentation that the identified facilities are not already subject to the good repair, working order, and condition requirements of the Leroy F. Greene School Facilities Act of 1998 or its predecessor program, the State School Building Lease-Purchase Law of 1976.¹⁴⁶

Additionally, Finance points out the claimant provided a receipt for multiple Ply Panels, which is not aligned with the requirements of AB 2232 and is not required by the plain language of the test claim statute nor is reasonably necessary to implement it, so reimbursement for these costs should be denied.¹⁴⁷

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill

¹⁴⁴ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 1.

¹⁴⁵ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 2.

¹⁴⁶ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 2.

¹⁴⁷ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, pages 2-3.

equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁴⁸ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁴⁹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁵⁰
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁵¹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹⁵²
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁵³

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁵⁴ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁵⁵ In making its

¹⁴⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁴⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁵⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁵¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹⁵² *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

¹⁵³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁵⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹⁵⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁵⁶

A. The Test Claim Was Timely Filed and the Potential Period of Reimbursement Begins January 1, 2023.

Government Code section 17551(c) requires test claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.¹⁵⁷

The test claim statute became effective on January 1, 2023.¹⁵⁸ The Test Claim was filed on November 17, 2023,¹⁵⁹ within 12 months of the effective date of the test claim statute, so the Test Claim was timely filed.

Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The November 17, 2023 filing date establishes reimbursement eligibility for the 2022-2023 fiscal year, but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

B. The Uncodified Language in Section 1 of the Test Claim Statute and Education Code Section 17660 as Added by the Test Claim Statute Describe the Legislature’s Findings, But Does Not Impose Requirements on School Districts and Therefore Does Not Constitute a State-Mandated Program.

Reimbursement under article XIII B, section 6 is required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁶⁰

Section 17660, added by the test claim statute, does not impose requirements on school districts, but provides:

The Legislature finds and declares that it is the policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect

¹⁵⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

¹⁵⁷ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

¹⁵⁸ Statutes 2022, chapter 777. Exhibit A, Test Claim, filed November 17, 2023, page 98.

¹⁵⁹ Exhibit A, Test Claim, filed November 17, 2023, page 1.

¹⁶⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

occupant health, reduce sick days, and improve student productivity and performance.¹⁶¹

Similarly, uncodified section 1 of the test claim statute contains legislative findings and declarations and cites four studies or reports on the adverse effects of poor indoor quality on school-age children but imposes no requirements on school districts.¹⁶²

Accordingly, the uncodified language in section 1 of the test claim statute and section 17660, as added by the test claim statute, do not impose a state-mandated program.

C. Education Code Section 17661, as Added by the Test Claim Statute, Does Not Impose a Reimbursable State-Mandated Program.

1. Education Code Section 17661(a), (d), and (e) Do Not Impose Any Requirements on School Districts.

Section 17661(a) defines “covered school,” “HVAC,” and “MERV” as used in the test claim statute, but does not impose any requirements on school districts.

Section 17661(d) requires the California Building Standards Commission and the Division of the State Architect to research, develop, and propose for adoption mandatory standards for carbon dioxide monitors in classrooms of a covered school and the University of California on the next triennial update of the California Building Standards Code (title 24 of the California Code of Regulations).¹⁶³

Section 17661(e) states: “This section shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make it applicable.”

Section 17661(a), (d) and (e) as added by the test claim statute, do not impose any requirements on school districts and, therefore, there is no state-mandated program imposed by these subdivisions.

¹⁶¹ Education Code section 17660 (Stats 2022, ch. 777).

¹⁶² Statutes 2022, chapter 777, section 1.

¹⁶³ Education Code section 17661(d) (Stats 2022, ch. 777).

2. **The Requirement in Education Code Section 17661(b)(2), to Inspect the HVAC Systems to Ensure They Meet the Minimum Ventilation Rates *in Effect When the Building Permit for HVAC Installation Was Issued* Is Not New and Does Not Impose a New Program or Higher Level of Service. Although the Requirements in Sections 17661(b)(1) and (b)(2) to Inspect HVAC Systems to Ensure Compliance with the *Current* Minimum Ventilation Rates in Table 120.1-A of the Energy Code and Document in the Annual Inspection Report the System’s Inability to Meet *Current* Ventilation Standards in Table 120.1-A Is New for School Districts with HVAC Systems Approved for Installation *Before* January 1, 2020, There Is No Evidence of Increased Costs Mandate by the State to Comply with the Requirements.**

Section 17661(b)(1) requires school districts to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC [defined as heating, ventilation, and air conditioning] systems *that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6* (commencing with Section 100.0) of Title 24 of the California Code of Regulations, *unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.*¹⁶⁴

Section 17661(b)(2) requires a school incapable of meeting the minimum ventilation rates in Table 120.1-A of title 24 to:

- [E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued. . . [and;]
- [D]ocument the HVAC system’s inability to meet the current ventilation standards set forth in paragraph (1) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.¹⁶⁵

As indicated in the background, title 24, including the Energy Code in part 6, is revised and published every three years.¹⁶⁶ The test claim statute and the 2022 Energy Code (published July 1, 2022 and eff. Jan. 1, 2023) both became effective on January 1, 2023.¹⁶⁷ Thus, the requirement in section 17661(b)(1) to “[e]nsure that facilities . . . have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to the *current* Energy Code. If a school HVAC

¹⁶⁴ Education Code section 17661(b)(1) (Stats 2022, ch. 777). Emphasis added.

¹⁶⁵ Education Code section 17661(b)(2) (Stats 2022, ch. 777). Emphasis added.

¹⁶⁶ Health and Safety Code section 18942(a).

¹⁶⁷ Exhibit F (1), Building Standards Commission, California Building Standards Code, [https://www.dgs.ca.gov/BSC/Codes#:~:text=Code%20Regs.%2C%20Title%2024\),date%20of%20January%201%2C%202023](https://www.dgs.ca.gov/BSC/Codes#:~:text=Code%20Regs.%2C%20Title%2024),date%20of%20January%201%2C%202023) (accessed on Aug. 12, 2024).

system is incapable of meeting the minimum ventilation rates in the current Energy Code, Education Code section 17661(b)(2) requires the school to “[e]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued.”¹⁶⁸

Table 120.1-A of the Energy Code identifies the “Minimum Ventilation Rates” for HVAC systems, including the total outdoor air rate, the minimum ventilation rates for systems with DCV (demand control ventilation) devices, and the air class applicable to “educational facilities,” including classrooms. To understand these terms, a summary of the Energy Code’s requirements is necessary. The Energy Code currently requires occupiable spaces in nonresidential buildings, including school facilities, to meet specified air filtration requirements (which are discussed in the next section) and the requirements for naturally ventilated spaces or mechanically ventilated spaces, depending on the HVAC system the school uses.¹⁶⁹ Some mechanically ventilated systems have demand control ventilation (DCV) devices, which vary the outdoor air delivery rate based on carbon dioxide (CO₂) and occupancy levels in the room.¹⁷⁰ DCV devices are required for spaces with a design occupant density of greater than or equal to 25 people per 1,000 square feet and the system has an air economizer, a modulating outside air control, or a design outdoor air rate of greater than 3000 cfm.¹⁷¹ All systems are required to meet the minimum outside air ventilation rates for each occupied area based on the anticipated occupancy and the minimum required ventilation rate per occupant in Table 120.1-A.¹⁷²

¹⁶⁸ Emphasis added.

¹⁶⁹ California Code of Regulations, title 24, part 6, section 120.1(c). Section 120.1(c)(2) also requires naturally ventilated spaces to include a mechanical ventilation system designed in accordance with certain specifications.

¹⁷⁰ California Code of Regulations, title 24, part 6, section 120.1(d); Exhibit F (5), California Energy Commission, Installer and Inspector Quick-Reference: 2022 NRCA-MCH-06-A Demand Control Ventilation (DCV) Systems, 2022, <https://www.energy.ca.gov/filebrowser/download/4953> (accessed on Aug. 15, 2024), page 1; Exhibit F (2), California Department of Public Health, Ventilation and Filtration to Reduce Long-Range Airborne Transmission of COVID-19 and Other Respiratory Infections: Considerations for Reopened Schools, California Department of Public Health, July 2021, https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/School_ventilation_and_filtration_ADA.pdf (accessed on Aug. 23, 2024), page 18.

¹⁷¹ California Code of Regulations, title 24, part 6, section 120.1(d)(3).

¹⁷² California Code of Regulations, title 24, part 6, sections 120.1(c), 120.1(c)(3), 120.1(d), and 120.1(f).

The regulations also provide, “[a]ir classification and recirculation limitations of air shall be based on the air classification as listed in Table 120.1-A,”¹⁷³ which are also identified in ASHRAE 62.1 (the standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers). Two air classifications are relevant to school facilities.¹⁷⁴ Class 1 air can be recirculated to any space type and is typical of the air in a classroom. Class 2 air is moderately contaminated or odorous with mild sensory irritation intensity, is restricted in its recirculation, and is typical of a science laboratory or art classroom.¹⁷⁵ Thus, Table 120.1-A identifies the following “Minimum Ventilation Rates” for schools:¹⁷⁶

Occupancy Category	Total Outdoor Air Rate R_t (cfm/ft ²)	Min. Ventilation Air Rate for DCV R_a (cfm/ft ²)	Air Class	Notes
Classrooms (ages 5-8)	0.38	0.15	1	
Classrooms (age 9-18)	0.38	0.15	1	
Art Classrooms	0.15	-	2	
Science Laboratories	0.15	-	2	

The table indicates the total outdoor air rate for classrooms is 38 cubic feet per unit area, and the minimum ventilation air rate for systems with demand control ventilation devices is 15 cubic feet per minute of outdoor air flow per person.¹⁷⁷ Table 120.1-A also identifies the minimum ventilation rates for other school facilities such as lecture halls; multi-use assembly rooms; wood and metal shops; computer labs; media centers; and music, theater, and dance rooms.

The test claim statute does not define what “ensure” compliance with the minimum ventilation rate requirements means. According to its legislative history, “AB 2232 will require comprehensive HVAC *inspections* . . . in classrooms *to ensure* the wellbeing and learning of California students are protected from the harmful effects of poor air quality.”¹⁷⁸ Thus, section 17661(b)(1) requires school districts *to inspect* their HVAC systems to ensure they meet the current minimum ventilation rate requirements in Table 120.1-A above, and if their systems do not, section 17661(b)(2) requires the schools to ensure the systems meet the minimum ventilation rates in the Energy Code when their HVAC installation permit was issued and document the HVAC system’s inability to meet the current ventilation standards in the annual HVAC inspection report required by section 5142 of the title 8 regulations.

¹⁷³ California Code of Regulations, title 24, part 6, sections 120.1(g).

¹⁷⁴ California Code of Regulations, title 24, part 6, section 120.1(g).

¹⁷⁵ California Code of Regulations, title 24, part 6, section 120.1(g)(1)-(g)(2).

¹⁷⁶ California Code of Regulations, title 24, part 6, section 120.1.

¹⁷⁷ California Code of Regulations, title 24, part 6, section 120.1(c)(3).

¹⁷⁸ Exhibit F (11), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 2232, as amended June 28, 2022, page 3. Emphasis added.

The claimant contends that part 6 of the Energy Code did not apply to schools before the test claim statute was enacted, suggesting that school compliance with the Energy Code is newly required in the test claim statute. According to the claimant:

California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B) requirements for ventilation and indoor air quality are applicable to “All occupiable spaces in hotel/motel buildings, and nonresidential buildings other than healthcare facilities shall comply with the applicable requirements of Section 120.1(a) through 120.1(g). . . . This requirement did not include schools.”¹⁷⁹

The claimant also states that section 17661(b)(1) of the test claim statute supports the argument that title 24, part 6 did not apply to schools before the test claim statute was enacted.¹⁸⁰

The claimant is incorrect. Part 6 of the title 24 regulations establishes requirements for the design and installation of ventilation and space conditioning systems in “*nonresidential*, high-rise residential, and hotel/motel buildings as well as covered processes that are within the scope of Section 100.0(a).”¹⁸¹ Public schools are “nonresidential buildings. Moreover, section 100 of the Energy Code describes the scope of Part 6.”¹⁸² It states “[t]he provisions of Part 6 apply to all buildings” that are in a specified occupancy group, including “Group E,” meaning “the use of a building or structure, or a portion thereof, by more than six persons at any one time for educational purposes through the 12th grade;”¹⁸³ and “for which an application for a building permit or renewal of an existing permit is filed (or is required by law to be filed) on or after the effective date of the provisions, or which are constructed by a governmental agency,” and are either “unconditioned,” or “indirectly or directly conditioned, or process

¹⁷⁹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 3.

¹⁸⁰ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 3.

¹⁸¹ California Code of Regulations, title 24, part 6, section 120.0. Emphasis added. See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 133.

¹⁸² California Code of Regulations, title 24, part 6, section 100(a) is entitled “scope;” See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 57.

¹⁸³ Group E buildings are defined in California Code of Regulations, title 24, part 2, section 305.1; see also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 81 (“NONRESIDENTIAL BUILDING is any building which is identified in the California Building Code Table; Description of Occupancy as Group A, B, E, F, H, M, or S; and is a U; as defined by Part 2 of Title 24 of the California Code or Regulation.”).

spaces.”¹⁸⁴ A directly conditioned space is an “enclosed space that is provided with wood heating, mechanical heating that has a capacity exceeding 10 Btu/hr-ft², or mechanical cooling that has a capacity exceeding Btu/hr-ft².”¹⁸⁵ An HVAC system is defined in part 6 as “a space conditioning system or a ventilation system.”¹⁸⁶ A space-conditioning system is defined as “a system that provides mechanical heating or mechanical cooling within or associated with conditioned spaces in a building,”¹⁸⁷ and a ventilation system is “a mechanical device intended to remove air from buildings.”¹⁸⁸

In addition, Table 120.1-A expressly provided standards for nonresidential “classroom” air quality, including “science labs” and “art classrooms” at the time the test claim statute was enacted.¹⁸⁹ Therefore, school buildings were required to comply with the Energy Code, before the enactment of the test claim statute.

This interpretation is consistent with that of the State’s Division of State Architect, which is the “enforcement agency” supervising the design and construction of school buildings to ensure compliance with title 24, including inspections during installation.¹⁹⁰ As

¹⁸⁴ California Code of Regulations, title 24, part 6, section 100 (a) is entitled “scope;” See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 57.

¹⁸⁵ California Code of Regulations, title 24, Part 6, section 100.1(b); See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 67.

¹⁸⁶ California Code of Regulations title 24, Part 6, section 100.1(b); See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 75.

¹⁸⁷ California Code of Regulations title 24, Part 6, section 100.1(b); See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 91.

¹⁸⁸ California Code of Regulations title 24, Part 6, section 100.1(b). The section provides definitions for various kinds of ventilation systems, the common theme being that they are mechanical devices intended to remove air from buildings. Section 120.1(c) in Part 6 requires occupiable spaces to be ventilated with either a natural ventilation system or a mechanical ventilation system. (See also, Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 134.)

¹⁸⁹ California Code of Regulations, title 24, part 6, section 120(g), Table 120.1-A, effective January 1, 2020. In the 2022 Energy Code (eff. Jan. 1, 2023), the same table is in section 120(h).

¹⁹⁰ Education Code section 17280(a), (as last amended by Stats. 2002, ch. 33), which references the Department of General Services that is over the Division of State Architect. *Hall v. City of Taft* (1956) 47 Cal.2d, 177. Regarding inspections, see Education Code sections 17311(a), 17280; See also California Code of Regulations, title 21, section 2.

explained by the State Architect, “Title 24 . . . contains the regulations that govern structural safety and sustainability for California’s public schools . . .” and Part 6 “contains energy conservation standards applicable to all . . . nonresidential buildings throughout California, *including schools* and community colleges.”¹⁹¹ Under the rules of statutory interpretation, the Commission can rely on the State Architect’s interpretation of the Energy Code since “[a]n agency’s expertise with regard to a statute or regulation it is charged with enforcing entitles its interpretation of the statute or regulation to be given great weight unless it is clearly erroneous or unauthorized.”¹⁹²

Moreover, existing law already requires school districts to inspect, maintain, and ensure their installed HVAC systems are running and in good repair, and provide at least the quantity of outdoor air required by title 24 *at the time their building or installation permit was obtained*. Since 1987, section 5142(b) of the title 8 regulations has required annual inspections of HVAC systems in workplaces, with inspections and maintenance to be documented in writing.¹⁹³ Title 8 includes the General Industry Safety Orders (GISOs) for employers,¹⁹⁴ which apply to school districts.¹⁹⁵ The GISO in section 5142 of title 8, entitled “Mechanically Driven Heating, Ventilating and Air Conditioning (HVAC) Systems to Provide Minimum Building Ventilation,” expressly requires annual workplace inspections to ensure compliance with the minimum ventilation rate requirements in effect when the building permit was issued so the HVAC system operates properly each year after installation, as it states:

(a) Operation:

¹⁹¹ Exhibit F (12), Department of General Services, Division of the State Architect, Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect, <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=PART%20%202D%20CALIFORNIA%20ENERGY%20CODE,includin%20schools%20and%20community%20colleges> (accessed September 25, 2024), page 2, emphasis added. See also Public Resources Code section 25488.

¹⁹² *L & S Framing, Inc. v. Occupational Safety and Health Appeals Bd.* (2023) 93 Cal.App.5th 995, 1008-1009.

¹⁹³ California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .”

¹⁹⁴ California Code of Regulations, title 8, section 3200 et seq. The General Industrial Safety Orders are “to make full provision for securing safety in places of employment, . . . [and] are promulgated for the guidance of employers and employees alike.” (Cal. Code Regs., tit. 8, § 3200).

¹⁹⁵ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300), which the title 8 regulations implement.

(1) The HVAC system shall be maintained and operated to provide at least the quantity of outdoor air required by the State Building Standards Code, Title 24, Part 2, California Administrative Code, in effect at the time the building permit was issued.^{196]}

[¶] . . . [¶]

(b) Inspection and Maintenance:

(1) The HVAC system shall be inspected at least annually, and problems found during these inspections shall be corrected within a reasonable time.

(2) Inspections and maintenance of the HVAC system shall be documented in writing. The employer shall record the name of the individual(s) inspecting and/or maintaining the system, the date of the inspection and/or maintenance, and the specific findings and actions taken. The employer shall ensure that such records are retained for at least five years.

(3) The employer shall make all records required by this section available for examination and copying, within 48 hours of a request, to any authorized representative of the Division (as defined in Section 3207), to any employee of the employer affected by this section, and to any designated representative of said employee of the employer affected by this section.

Similarly, Education Code sections 17002 and 17070.75, in the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems.¹⁹⁷ As a condition of receiving funds for new construction or modernization projects, schools are required to provide for ongoing and major building maintenance.¹⁹⁸ According to section 17002(d),¹⁹⁹ “good repair” means:

[T]he facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to a *school facility inspection and evaluation instrument* developed by the Office of Public School

¹⁹⁶ It is inconsequential that section 5142 references “part 2” of title 24 rather than part 6. At the time the title 8 regulation was adopted in 1987, the energy regulations were in part 2 and were not codified into part 6 until 1992. Exhibit F (6), California Energy Commission, *The 1992 Efficiency Standards for New Residential and Non-Residential Buildings*, July 1, 1992, footnote 1.

¹⁹⁷ Education Code sections 17014(c), 17070.77(a) – (b).

¹⁹⁸ Education Code section 17075(a).

¹⁹⁹ See also Education Code, section 17070.75, which addresses facilities maintenance and incorporates by reference the definition of ‘good repair’ in section 17002(d).

Construction and approved by the board or a local evaluation instrument that meets the same criteria.²⁰⁰

The “evaluation instrument” used to determine good repair is the Facility Inspection Tool (FIT), developed by the Office of Public School Construction.²⁰¹ Section 17002(d) requires the FIT to include the following minimum criteria for mechanical and HVAC systems: “(i) functional and unobstructed; (ii) appear to supply adequate amount of air to all classrooms, work spaces, and facilities; and (iii) maintain interior temperatures within normally acceptable ranges.”²⁰² Consistent with these criteria in section 17002(d), the FIT as revised in April 2022 states:

Heating, ventilation, and air conditioning systems (HVAC) as applicable are functional and unobstructed. Examples include but are not limited to the following:

- a. The HVAC system is operable.
- b. The facilities are ventilated (via mechanical or natural ventilation).
- c. The ventilation units are unobstructed and vents and grills are without evidence of excessive dirt or dust.
- d. There appears to be an adequate air supply to all classrooms, work spaces, and facilities (i.e. no strong odor is present, air is not stuffy)
- e. Interior temperatures appear to be maintained within normally accepted ranges.
- f. The ventilation units are not generating any excessive noise or vibrations.

[¶] . . . [¶]

[and] Surfaces (including floors, ceilings, walls, window casings, HVAC grills) appear to be free of mildew, mold odor and visible mold.²⁰³

The FIT is to assist county superintendents of schools in their statutory duty to annually visit their schools and to assess or inspect for:

The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, *and the safety, cleanliness, and*

²⁰⁰ Education Code section 17002(d)(1). Emphasis added.

²⁰¹ Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).

²⁰² Education Code section 17002(d)(1)(B).

²⁰³ Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024), pages 3, 4.

adequacy of school facilities, including good repair, as required by Sections 17014, 17032.5, 17070.75, and 17089.²⁰⁴

Thus, the requirement in section 17661(b)(2), for a school to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is not new and does not impose a new program or higher level of service on school districts.²⁰⁵

However, the requirements imposed by section 17661(b)(1) and (2) to inspect the HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of part 6, and if the existing HVAC system is “not capable of safely and efficiently providing the minimum ventilation rate” to document the system’s inability to meet the *current* standards, goes beyond the scope of the existing requirements and is new for school districts with HVAC systems approved under the 2016 or earlier Energy Codes.

Table 120.1-A in the 2019 Energy Code is the same as Table 120.1-A in the 2022 Energy Code, so the requirements to inspect the system to ensure compliance with *current* minimum ventilation rates and document the inspection in writing is *not* new to the extent a school district received a permit for an HVAC installation under the 2019 Energy Code, effective January 1, 2020.²⁰⁶ Existing law already required schools to conduct annual inspections to ensure the HVAC system provides “at least the quantity of outdoor air required by . . . Title 24, . . . *in effect at the time the building permit was issued*” and to document that inspection in writing.²⁰⁷ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new and do not increase the level of service for HVAC systems approved for installation on or after January 1, 2020.

Unlike the 2019 and 2022 versions, Table 120.1-A in the 2016 Energy Code only identifies the minimum ventilation rates per square foot of conditioned floor area and does not identify the minimum ventilation air rate for systems with demand control ventilation devices or the air class.²⁰⁸ Discussing the difference between Table 120.1-A

²⁰⁴ Education Code section 1240(c)(2)(E)(iii). Emphasis added. Also see Exhibit F (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024), page 1.

²⁰⁵ Emphasis added.

²⁰⁶ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

²⁰⁷ California Code of Regulations, title 8, section 5142. Emphasis added.

²⁰⁸ California Code of Regulations, title 24, part 6, section 120.1(e), Table 120.1-A, effective January 1, 2017. See also Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 137.

in the 2019 Energy Code and earlier (2016 and before) Energy Codes, one publication explained:

New minimum ventilation rate calculations have been added to Table 120.1-A. The table includes significantly more information, reducing the need to cross reference between the Building or and [sic] Energy Code to determine the minimum ventilation rates. It includes many additional space types (occupancy categories) and identifies the “air classifications” referenced by §120.1(g).²⁰⁹

[¶] . . . [¶]

This change [to section 120.1(g)] adds air classifications and recirculation limits for ventilation air. Previously, the Energy Code did not give direction on these two concepts, although they may have a significant impact on indoor air quality. They are present in ASHRAE standards that were incorporated by reference but not directly stated in the Energy Code.²¹⁰

In addition, the 2016 and earlier versions of Table 120.1-A do not contain DCV standards because, as stated in the 2016 Energy Code: “Classrooms . . with occupant density greater than 2.5 people per 1000 ft². . . are not required to have demand control ventilation.”²¹¹ According to the 2016 Nonresidential Compliance Manual, classrooms and other spaces “are exempted either due to concerns about equipment maintenance practices (schools and public buildings) or concerns about high levels of pathogens (social service buildings, medical buildings, healthcare facilities and to some extent classrooms).”²¹² However, the 2016 exception for DCV in classrooms was removed in the 2019 Energy Code.²¹³

Thus, Table 120.1-A changed since the 2016 Energy Code and the requirements in section 17661(b)(1) and (2) to ensure compliance with *current* minimum ventilation rates and to “document the HVAC system’s inability to meet the *current* ventilation standards set forth in paragraph (1) in the annual HVAC inspection report required by section 5142” of the title 8 regulations goes beyond the scope of prior law for schools that received a permit for an HVAC installation under the 2016 or earlier Energy Code (i.e., *before* January 1, 2020).

²⁰⁹ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 97.

²¹⁰ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 105.

²¹¹ California Code of Regulations, title 24, part 6, section 120.1(c)(3), effective January 1, 2016.

²¹² Exhibit F (4), California Energy Commission, 2016 Nonresidential Compliance Manual, Chapter 4, page 4-45.

²¹³ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 101.

However, the claimant has not requested reimbursement for inspection and documentation activities and there is no evidence in the record school districts incurred costs mandated by the state to comply with these requirements. The Government Code defines “costs mandated by the state” as any increased cost a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.²¹⁴ Further, no claim nor any payment shall be made unless the claim exceeds \$1,000.²¹⁵ The Commission’s regulations require “[a]ll representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the Commission’s regulations.”²¹⁶ The Test Claim and the declarations in the record describe the process to replace MERV 9 air filters with new MERV 13 air filters, which the claimant alleges is required to comply with the test claim statute.²¹⁷ Although installing MERV 13 filters is addressed in Education Code section 17661(c), which is discussed below, it is not a requirement imposed by section 17661(b). The claimant identifies no costs in the Test Claim or the declarations to comply with the section 17661(b) requirements to inspect the HVAC systems for compliance with current standards and document the system’s inability to meet current standards.

Therefore, the Commission finds Education Code section 17661(b) does not impose a reimbursable state-mandated program because:

- The requirement in section 17661(b)(2), for a school inspection to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service.
- The requirements in section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of the title 8 regulations, are *not* new and do not impose a new program or higher level of service for school districts that received a permit for an HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved *on or after* January 1, 2020).
- There is no evidence of costs mandated by the state to comply with section 17661(b)(1) and (b)(2), for school districts that received a permit for HVAC installation under the 2016 or earlier Energy Code (approved *before* January 1, 2020), to inspect HVAC systems to ensure compliance with the

²¹⁴ Government Code section 17514.

²¹⁵ Government Code section 17564(a).

²¹⁶ California Code of Regulations, title 2, section 1183.1(e).

²¹⁷ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 18-19 (Landon Declaration); Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

current minimum ventilation rates in Table 120.1-A of the Energy Code, as amended in 2022, and to document the system's inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of the title 8 regulations.²¹⁸

3. Reimbursement Is Not Required to Comply with Education Code Section 17661(c) Because There Is No Evidence in the Record of Increased Costs Mandated by the State to Comply with the One-Time New Requirement to Install MERV 13 Filtration, or the Highest MERV Filtration Feasible, *Only* at Schools with HVAC Systems Approved for Installation *Before* January 1, 2020 and Only to the Extent the District's Schools Did *Not* Have a COVID-19 Outbreak.

Section 17661(c), as added by the test claim statute, requires school districts to install MERV 13 air filtration or the highest filtration feasible in their HVAC systems:

- [I]nstall filtration that achieves “MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.
- If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall . . . install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.²¹⁹

As indicated above, MERV is an acronym for minimum efficiency reporting value.²²⁰ MERV air filtration was explained as follows in an Energy Commission publication:

Air filtration is used in forced air systems to protect the equipment from dust accumulation that could reduce the capacity or efficiency of the system. Preventing dust buildup may also prevent the system from becoming a host to biological contaminants such as mold, especially if dust is deposited on cooling coils that become wet from water condensation during comfort cooling operation. Air filter efficiencies of Minimum Efficiency Reporting Value (MERV) 6 to MERV 8 are sufficient for protection from these large airborne dust particles. Air filter efficiencies of at least MERV 13 are needed to protect occupants from exposure to the smaller airborne particles that are known to adversely affect respiratory

²¹⁸ Government Code section 17514, California Code of Regulations, title 2, section 1183.1(e).

²¹⁹ Education Code section 17661(c) (Stats 2022, ch. 777).

²²⁰ Education Code section 17661(a)(3) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b)).

health. These smaller particles are often referred to as PM 2.5 which refers to particulate matter of 2.5 microns. PM2.5 is produced from combustion such as that resulting from cooking in the kitchen and from exhaust from motor vehicles that enters a dwelling through ventilation openings and infiltration.²²¹

As discussed below, the Commission finds reimbursement is not required to comply with Education Code section 17661(c) because there is no evidence in the record of increased costs mandated by the state to comply with the one-time new requirement to install MERV 13 or the highest filtration feasible *only* at schools with HVAC systems approved for installation *before* January 1, 2020, and only to the extent the district's schools did *not* have a COVID-19 outbreak.

- a. Education Code section 17661(c) imposes a *one-time* new requirement to install filtration that achieves MERV levels of 13 or higher, or install filtration that achieves the highest MERV level feasible without reducing the lifespan of the existing HVAC system, *only* for schools with HVAC systems approved for installation before January 1, 2020 (under the 2016 or earlier Energy Code) and only to the extent the district's schools did not have a COVID-19 outbreak as defined.

The current Energy Code requires filters shall have a designated efficiency equal to or greater than MERV 13.²²² The same requirement is in the 2019 Energy Code (eff. Jan. 1, 2020).²²³ But the 2016 Energy Code (eff. Jan. 1, 2017) did not require filters rated at MERV 13 or higher.²²⁴ The 2019 Energy Code amendment increased the minimum requirement to MERV 13:

The extensive changes to Section 120.1 address outdoor air ventilation and indoor air quality (IAQ) with new requirements for air filtration and system designs. Subsection (c) applies to the occupiable spaces in high-rise [and] nonresidential buildings, and hotels/motels. Subsection (c)1 addresses air filtration. It specifies the types of mechanical systems that must have air filters, air filter efficiency, and sizes. The 2019 Energy Code ensures that HVAC systems are designed to accommodate higher MERV filters so that occupants can improve filtration without inadvertently

²²¹ Exhibit F (7), California Energy Commission, 2022 Residential Compliance Manual, <https://www.energy.ca.gov/filebrowser/download/5126> (accessed on May 2, 2024), pages 4-39 to 4-40.

²²² California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B) (eff. Jan. 1, 2023).

²²³ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B) (eff. Jan. 1, 2020).

²²⁴ Exhibit F (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

harming the energy efficiency, lifespan, or overall performance of their HVAC system.

[¶] . . . [¶]

To improve indoor air quality, the air filtration particle size efficiency requirement has increased from MERV 6 to MERV 13. A MERV 13 filter effectively filters out fine particulate matter (PM 2.5).²²⁵

Therefore, the MERV 13 requirement in Education Code section 17661(c) is *not* new to the extent a school received a permit to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.²²⁶ Prior law also required these filters be replaced or cleaned regularly, as the title 8 regulation states:

Where the air supply is filtered, the filters shall be replaced or cleaned regularly to prevent significant reductions in airflow. A pressure gauge shall be installed to show the pressure drop across the filters. This gauge shall be marked to show the pressure drop at which filters require cleaning or replacement.²²⁷

As indicated above, this title 8 regulation is a GISO that applies to employers, including school districts.²²⁸ The claimant acknowledges that title 8 “generally deals with workplace safety,” and does not specifically dispute its applicability to schools. However, the claimant puts no evidence in the record of any of its HVAC systems being approved for installation prior to January 1, 2020.²²⁹

In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).²³⁰ Under these

²²⁵ Exhibit F (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

²²⁶ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B).

²²⁷ California Code of Regulations, title 8, section 5143(d)(3) (Register 80, No. 8).

²²⁸ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300), which the title 8 regulations implement.

²²⁹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, pages 4, 7-8 (Landon Declaration). Exhibit A, Test Claim, filed November 17, 2023, pages 6-7, 13-14, 18-20 (Landon Declaration).

²³⁰ See California Code of Regulations, title 8, section 3205.1(a)(1). (Register 2022, No. 18.) Section 3205(b)(7) of title 8 defines “exposed group” to mean “all employees at a work location, working area, or a common area at work, within employer-provided transportation covered by section 3205.3, or residing within housing covered by section

circumstances, existing regulations in section 3205.1(f) of title 8 required the school to comply with the same filtration requirements as the test claim statute:

(f) In buildings or structures with mechanical ventilation, employers shall filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filters with the highest compatible filtering efficiency. .

.²³¹

Although this title 8 regulation expires by its own terms on February 3, 2025, the ventilation requirements in subdivision (f) continue pursuant to section 3205(h)(4) in title 8 that states; “A place of employment subject to section 3205.1 after February 3, 2023 shall continue to comply with the ventilation requirements of subsection 3205.1(f) even after the outbreak has passed and section 3205.1 is no longer applicable.”²³² And, as stated above, schools were required by prior law to regularly replace or clean these filters.²³³

Therefore, the requirement in Education Code section 17661(c) to install filtration that achieves MERV levels of 13 or higher, or install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan

3205.2, where an employee COVID-19 case was present at any time during the infectious period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. The following exceptions apply:

(A) For the purpose of determining the exposed group, a place where persons momentarily pass through, without congregating, is not a work location, working area, or a common area at work.

(B) If the COVID-19 case was part of a distinct group of employees who are not present at the workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the exposed group.

(C) If the COVID-19 case visited a work location, working area, or a common area at work for less than 15 minutes during the infectious period, and the COVID-19 case was wearing a face covering during the entire visit, other people at the work location, working area, or common area are not part of the exposed group.

²³¹ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

²³² California Code of Regulations, title 8, sections 3205(h)(4) (Register 2023, No. 29, eff. Feb. 2, 2023), 3205.1(a) (Register 2023, No. 29, eff. Feb. 2, 2023). Thus, the claimant’s statement that the requirements in section 3205.1(f) of the title 8 regulations sunsets on February 3, 2025, is not correct. Exhibit E, Claimant’s Comments on the Draft Proposed Decision, filed September 23, 2024, page 4.

²³³ California Code of Regulations, title 8, section 5143(d)(3) (as last amended by Register 2003, No. 24).

or performance of the existing HVAC system, is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations. Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often and every three months,²³⁴ the requirement imposed by Education Code section 17661(c) is a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the filter efficiency level.²³⁵ On-going filter purchase and installation is not new.²³⁶

b. The one-time new requirement imposed by Education Code section 17661(c) is mandated by the state.

The California Supreme Court has made it clear there is a state-mandate when a statute or executive order uses mandatory language that ‘require[s]’ or ‘command[s]’ a local entity to participate in a program or service”; in other words, local government “has the legally enforceable duty to obey.”²³⁷ Section 17661(c) states: “a covered school *shall*, . . . install filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system.” According to Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

Therefore, the new one-time requirement imposed by section 17661(c) is mandated by the state only on school districts with HVAC systems approved for installation in their schools before January 1, 2020 (under the 2016 or earlier Energy Code) and only to the extent these district’s schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations, to install MERV 13 or higher or filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.

This finding also applies to school districts that applied for grant funding under the School Energy Efficiency Stimulus Program,²³⁸ which includes the School Reopening

²³⁴ Exhibit A, Test Claim, filed November 17, 2023, page 13.

²³⁵ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24).

²³⁶ Even if installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

²³⁷ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

²³⁸ Public Utilities Code section 1600 et seq. (AB 841, Stats. 2020, ch. 372).

Ventilation and Energy Efficiency Verification and Repair Program (SRVEVR).²³⁹ As described in the background, school districts, as a condition of receiving grant funds, are required to install MERV 13 filtration or higher where feasible, and have qualified testing personnel review system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting the equipment, replace or upgrade filters where needed, and verify those filters are installed correctly.²⁴⁰ Participating in that grant program is optional and not mandated by the state. The Government Code states “If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”²⁴¹

Thus, the one-time new requirement imposed by Education Code section 17661(c) is mandated by the state as described above.

c. The one-time new requirement imposed by Education Code section 17661(c) constitutes a new program or higher level of service.

The one-time mandated activity imposed by section 17661(c) must also constitute a new program or higher level of service within the meaning of article XIII B, section 6. “New program or higher level of service” is defined as “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”²⁴² Only one of these alternatives is required to establish a new program or higher level of service.²⁴³ Courts have found a

²³⁹ Public Utilities Code section 1620 et seq. SRVEVR is the acronym defined in the bill. See Public Utilities Code section 1601(b) (Stats. 2020, ch. 372).

²⁴⁰ Public Utilities Code section 1623(a)(1) (Stats. 2020, ch. 372).

²⁴¹ Government Code section 17565. However, any grant funding received under the program would have to be identified as offsetting revenues and the claimant would be required to provide evidence it incurred costs mandated by the state of its proceeds of taxes above and beyond the use of the grant funds. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) Reimbursement under article XIII B, section 6 is only required when a mandated new program or higher level of service forces local government to incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.” (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.)

²⁴² *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

²⁴³ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

reimbursable “higher level of service” concerning an existing “program” when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided.²⁴⁴

Here, school districts purchased and installed MERV filters before the test claim statute was enacted based on the Energy Code requirements in effect when their permits were approved. However, as stated above, the test claim statute imposes a newly mandated requirement to increase the MERV efficiency level, by installing a higher rated filter if feasible without significantly reducing the lifespan or performance of the existing HVAC system, for schools with HVAC systems approved for installation before January 1, 2020, that did *not* have a COVID-19 outbreak. The intent of the test claim statute is for “school facilities [to] provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.”²⁴⁵ Filters with higher MERV ratings are generally better at capturing smaller particles.²⁴⁶ Protecting the health and improving the productivity and performance of pupils are governmental services to the public, and the increase in the MERV efficiency increases the level or quality of service provided. That the test claim statute also applies to private schools does not change this conclusion. As the courts have said, “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function.”²⁴⁷

Thus, the one-time new requirement imposed by section 17661(c) constitutes a new program or higher level of service within the meaning of article XIII B, section 6.

- d. There is no evidence in the record the claimant has incurred increased costs mandated by the state to comply with the new state-mandated activity.

The last issue is whether the new activity mandated by section 17661(c) results in increased costs mandated by the state, which are defined as any increased cost a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.²⁴⁸ And no claim nor any payment shall be made unless the claim exceeds \$1,000.²⁴⁹ All representations of fact shall be

²⁴⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.App.4th 859, 877.

²⁴⁵ Education Code section 17660 (Stats. 2022, ch. 777).

²⁴⁶ Exhibit F (7), California Energy Commission, 2022 Residential Compliance Manual, <https://www.energy.ca.gov/filebrowser/download/5126> (accessed on May 2, 2024), pages 4-39 to 4-40.

²⁴⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d. 155, 172.

²⁴⁸ Government Code section 17514.

²⁴⁹ Government Code section 17564(a).

supported by documentary or testimonial evidence in accordance with the Commission's regulations.²⁵⁰ In addition, a finding of costs mandated by the state means none of the exceptions in Government Code section 17556 apply to deny the claim.

The Test Claim does not acknowledge any prior requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead the Test Claim alleges increased costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, for the following costs to install MERV 13 filters in *all* of its schools' HVAC systems.²⁵¹ The claimant also alleges it hired two employees to replace and install the MERV 13 air filters every three months.²⁵²

Year	Costs
January 1, 2023, to June 30, 2023	\$27,443.12 labor to install filters \$66,236.22, for MERV 13 filters. ²⁵³
July 1, 2023, to June 30, 2024	\$81,669.06 estimated labor to install filters \$100,119.04 estimated for MERV 13 filters ²⁵⁴
July 1, 2024, to June 30, 2025	\$120,624.56 estimated labor to install filters \$151,920.32 estimated for MERV 13 filters. ²⁵⁵

In response to the Draft Proposed Decision, the claimant filed a second declaration from the claimant's Deputy Superintendent of Business Services identifying the following one-time costs to purchase and install MERV 13 filters:

7. The Claimant first incurred increased one-time labor costs to replace and install the MERV 13 air filters on about January 1, 2023 in the amount of **\$18,681.16**. (Assembly Bill No. 2232, Statutes 2022, Chapter 777, Section 2, Education Code Section 17661 (c)(1)).
8. The Claimant first incurred increased one-time costs on about January 1, 2023 for purchasing the MERV 13 air filters in the amount

²⁵⁰ California Code of Regulations, title 2, sections 1183.1(e), 1187.5.

²⁵¹ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 18-19 (Landon Declaration).

²⁵² Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration). In rebuttal comments, the claimant states it replaces its HVAC rooftop units every six months and portable wall units every three months. Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

²⁵³ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

²⁵⁴ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

²⁵⁵ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

of **\$16,559.06**. (Assembly Bill No. 2232, Statutes 2022, Chapter 777, Section 2, Education Code Section 17661(c)(1)).²⁵⁶

The Declaration submitted with the Test Claim also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters as follows:

14. The Claimant received Elementary and Secondary School Emergency Relief (ESSER) II funds in the amount of \$26,295,815. These funds were distributed from June 2021 to August 2023 towards the Districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools. Prior to January 1, 2023, ESSER funds were used to purchase MERV 13 filters in the initial implementation of the new HVAC systems.

15. The Claimant received Elementary and Secondary School Emergency Relief (ESSER) III funds in the amount of \$58,852,535. The Claimant allocated \$13 million towards the Districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools. The difference is due to the Claimant having other priorities in spending the remainder of ESSER III funds. The Claimant has until September 30, 2024, to spend this allocation. There will be no additional allocations of ESSER funds. Attached are Department of General Services, Division of the State Architect approval plans for the replacement of the District's HVAC.²⁵⁷

This evidence shows the claimant has schools *not* subject to the newly mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have filters equal to or greater than MERV 13.²⁵⁸

However, there is *no* evidence in the record of increased costs mandated by the state to perform the mandated new program or higher level of service. As stated above, the mandated activity is the one-time installation of MERV 13 or higher filters or installing

²⁵⁶ Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed September 23, 2024, pages 7-8 (Landon Declaration).

²⁵⁷ Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

²⁵⁸ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system, in schools with HVAC systems that were approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these district's schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations. The Commission cannot make a finding of increased costs mandated by the state without evidence in the record.²⁵⁹

Therefore, the Commission finds there is no evidence of increased costs mandated by the state within the meaning of Government Code section 17514 to perform the mandated new activity imposed by Education Code section 17661(c).

V. Conclusion

Accordingly, the Commission finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and denies this Test Claim.

²⁵⁹ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).