Hearing Date: April 16, 2007
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Education Code Section 22119.2, as added and amended by Statutes 1999, chapter 939 and Statutes 2000, chapter 1021,

Filed on September 19, 2001,

By Lassen County Office of Education and San Luis Obispo County Office of Education; joined by Grant Joint Union High School District, Claimants (01-TC-02).

Education Code Sections 22000, 22002, 22119.2, 22119.5, 22146, 22455.5, 22458, 22460, 22461, 22501, 22502, 22503, 22504, 22509, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22718, 22724, 22800, 22801, 22803, 22851, 22852, 22950 and 22951;

Statutes 1993, Chapter 893; Statutes 1994, Chapters 20, 507, 603 and 933; Statutes 1995, Chapters 390, 394 and 592; Statutes 1996, Chapters 383, 608, 634, 680 and 1165; Statutes 1997, Chapters 482 and 838; Statutes 1998, Chapters 965, 967, 1006, 1048 and 1076; Statutes 1999, Chapter 939; Statutes 2000, Chapters 402, 880, 1020, 1021, 1025 and 1032; Statutes 2001, Chapters 77, 159, 802 and 803; Statutes 2002, Chapter 375,

Filed on May 12, 2003,

By Santa Monica Community College District, Claimant (02-TC-19).

Case No.: 01-TC-02, 02-TC-19

California State Teachers' Retirement System (CalSTRS) Creditable Compensation/Service Credit

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

(Adopted on April 16, 2007)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on April 16, 2007. Keith Petersen appeared on behalf of claimant Santa Monica Community College District (Santa Monica CCD). Donna Ferebee appeared on behalf of the Department of Finance. No appearance was made on behalf of claimants Lassen County Office of Education (Lassen COE), San Luis Obispo County Office of Education (San Luis Obispo COE), and Grant Joint Union High School District (Grant District).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve this test claim at the hearing by a vote of 4-3.

Summary of Findings

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System (Ed. Code, § 22000 et seq.; references to the law will not be abbreviated. "CalSTRS" will refer to the state agency operating the retirement system.) Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "compensation" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service."

The affected state agencies dispute the claimants' argument that any increased monthly contributions to the California State Teachers' Retirement System (CalSTRS) are reimbursable, and cite case law to support their position, including *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has consistently ruled, beginning with the *County of Los Angeles* decision in 1987, and reaffirming in 2004 in *San Diego Unified School Dist. v. Commission on State Mandates* (33 Cal.4th 859, at pages 876-877), that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

The Commission finds that the test claim statutes create a situation, as in *City of Anaheim*, where the employer is faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, the Commission finds that increased costs resulting from the test claim statutes, without more, do not impose a program, or a new program or higher level of service in an existing program, subject to article XIII B, section 6.

However, a number of the test claim statutes do require that the school district employer engage in new reporting and notice activities. The state agencies argue that these should be rejected on

the same rationale as the case law discussed above. The Commission disagrees. Those cases did not include a situation where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged. Therefore, the Commission finds that the test claim statutes impose a new program or higher level of service, and costs mandated by the state, by requiring new activities to be performed by school districts, as follows:

- Employers shall make available criteria for membership, including optional membership, in a timely manner to all persons employed to perform creditable service subject to coverage by the Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

  Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS. (Ed. Code, § 22455.5, subd. (b).)[1]

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision (a)(1) – (3), regarding the Defined Benefit Supplement account. (Ed. Code, § 22460; one-time activity.)[2]

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election to CalSTRS or CalPERS and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. (Ed. Code, § 22509, subd. (a).)[3]

- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a). (Ed. Code, § 22718, subd. (a)(1)(A).)[4]

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[1] As added and amended by Statutes 1994, chapter 603, Statutes 1996, chapter 634, and Statutes 1999, chapter 939.

All of the approved statutes and activities were pled in the test claim *CalSTRS Service Credit* (02-TC-19), filed on May 12, 2003, by Santa Monica CCD. Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

[2] As repealed, reenacted and amended, by Statutes 2000, chapter 1021.

[3] As repealed, reenacted and amended, by Statutes 1996, chapter 383, and Statutes 1997, chapter 838.

[4] As amended by Statutes 1999, chapter 939.

- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes. (Ed. Code, § 22724, subd. (b).)[5]
- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment. (Ed. Code, § 22852, subd. (e).)[6]

The Commission further concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

[5] As added by Statutes 1999, chapter 939.

[6] As added and amended by Statutes 1996, chapter 680, and Statutes 1998, chapter 965.

BACKGROUND

The California State Teachers' Retirement System, or CalSTRS, is a state agency operating a defined benefit retirement program for California public school teachers, and those holding other credentialed or certificated positions. According to the CalSTRS website, "CalSTRS' primary responsibility is to provide retirement related benefits and services to teachers in public schools from kindergarten through community college."[7] The State Teachers' Retirement System, Education Code section 22000 et seq., was significantly amended in 1944, recodified in 1969, and again in 1994. The system has been funded by a mandatory combination of state, employer and member contributions for many decades.

In 2001, Lassen and San Luis Obispo COEs, later joined by the Grant District, filed the test claim *CalSTRS Creditable Compensation* (01-TC-02) on Statutes 1999, chapter 939 and Statutes 2000, chapter 1021, as they added and amended Education Code 22119.2. In 2003, Santa Monica CCD filed the test claim *CalSTRS Service Credit* (02-TC-19) on the same Education Code section and statutes, but also made test claim allegations regarding 28 additional Education Code sections.[8]

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System. Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "compensation" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service." The Senate Bill Analysis, dated September 19, 2000, describes the change to the law as follows:

> Under existing law, "creditable service" excludes service performed in excess of the full-time equivalent and money paid for overtime and summer school service. Under this bill, all compensation will be creditable and all contributions for service in excess of one year of service credit shall be placed into the Defined Benefit Supplement Program. The member will be able to access the balance in the supplemental account upon retirement or separation.

Claimants' Positions

Test Claim Filing 01-TC-02

The test claim, *CalSTRS Creditable Compensation*, was filed on September 19, 2001,[9] by co-claimants, Lassen COE and San Luis Obispo COE. (Grant District was added as a

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[7] <http://www.calstrs.com/About%20CalSTRS/ataglance.aspx> as of Dec. 21, 2006.

[8] The two test claims share common issues, allegations, and statutes, therefore the claims were consolidated pursuant to California Code of Regulations, title 2, section 1183.06. However, because the 2002-03 test claim was not filed on behalf of the same claimants as the 2001-02 test claim, it is not an "amendment" pursuant to Government Code section 17557, subdivision (d). This could impact potential reimbursement periods where the test claim allegations vary.

[9] Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2000.

co-claimant by letters and declarations received on August 18, 2004.) The test claim filing is on Education Code section 22119.2, as it was amended by Statutes 1999, chapter 939, and Statutes 2000, chapter 1021. The claimants allege the following are reimbursable state-mandated activities:

A. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting State Teachers' Retirement System costs to employees; (Ed. Code, § 22119.2)

B. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;

C. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and

D. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Test Claim Filing 02-TC-19

Claimant, Santa Monica CCD, filed the test claim, *CalSTRS Service Credit*, on May 12, 2003.[10] The claim is for additions or amendments to 29 Education Code sections, including the code section and amendments claimed in *CalSTRS Creditable Compensation*. The vast majority of the claim seeks reimbursement for increased costs of employer contributions paid to CalSTRS due to various amendments to the State Teachers' Retirement System statutes. Specifically, Santa Monica CCD, beginning at page 90 of the test claim filing, alleges that:

> The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities: …

The allegations of activities include (pp. 90-107 of the test claim filing):

(1) adopting and updating policies and procedures (Ed. Code, § 22000 et seq.);

(2) contributing "a percentage of the total creditable compensation on which member contributions are based" (Ed. Code, § 22002, subd. (b));

(3) "make contributions for members … subject to the Defined Benefit Program" (Ed. Code, § 22146);

(4) "make available criteria for membership, including optional membership … to all persons employed to perform creditable service;" inform part-time employees and substitutes of the option to elect membership in the Defined Benefit Program, and keep records of written acknowledgment in the employer files (Ed. Code, § 22455.5, subd. (b));

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[10] Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

(5) provide CalSTRS "with information regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year" (Ed. Code, § 22458);

(6) provide specific notices to employees who terminate with less than five years of service credit (Ed. Code, § 22460);

(7) provide advice to re-employed retired members of post-retirement earnings limitations, and maintain records and report to CalSTRS regarding those earnings on a monthly basis (Ed. Code, § 22461);

(8) inform certain new employees of the right to make certain elections under the State Teachers' Retirement System and make available written material from the retirement systems (Ed. Code, § 22509); and

(9) additional costs of employer contributions pursuant to a variety of statutes regarding creditable compensation and service credit.

In separate rebuttal letters, each dated August 15, 2003, the claimant disputes the arguments and assertions provided by DOF and CalSTRS in their comments on the test claim filing.[11] Claimant's substantive arguments, including an analysis distinguishing the case law cited by the state agencies, are addressed in the Discussion section below.

No written comments were received on the draft staff analysis from any claimants or interested parties until the morning of the hearing. On April 16, 2007, a late filing was received stating that "the claimants for the *California State Teachers' Retirement System (CalSTRS)* [*Creditable Compensation*] portion of this consolidated test claim support staff's final analysis and urge the Commission to adopt the analysis and statement of decision as currently drafted."

[11] In these rebuttals, the claimant argues that the state agency comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (§ 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that neither of the state agency responses "comply with this essential requirement." (Claimant's rebuttal letters, dated Aug. 15, 2003, p. 1.)

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by the Commission at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

Department of Finance Position

Response to Test Claim Filing 01-TC-02

In a letter dated December 4, 2001, DOF responded to the allegations in the *CalSTRS Creditable Compensation* test claim. Specifically, at page 2, DOF identifies the claimants' argument that:

> the requirement that public school employers provide increased monthly contributions to CalSTRS effective July 1, 2002, will result in their being required to engage in a new activity as defined in Article XIII B, Section 6 of the California Constitution. Claimant therefore alleges the cost of providing the increased monthly contributions are State-mandated, and reimbursable.

DOF responds:

> However, California courts have ruled that the California Constitution does not require that local agencies be reimbursed for legislatively imposed new costs associated with the provision of contributions to State-administered retirement systems, as this activity does not fall within the parameters of a "new program or higher level of service" as those terms are used in Article XIII B, Section 6 of the California Constitution.

(The specific cases cited will be discussed in the analysis below.) DOF further asserts that this same legal rationale precludes the claimants from seeking reimbursement for modifications of policies and procedures, and for district personnel training costs, related to the statutory change in definition of "creditable compensation." Finally, they assert that the non-specific claim for "any additional activities" identified during parameters and guidelines is inappropriate, because "the purpose of the Parameters and Guidelines phase is to specify which activities the Commission identified as reimbursable in the Test Claim phase, to identify eligible claimants, to specify the date upon which the identified activities became reimbursable, and to provide guidance on preparing and submitting reimbursement claims."

Response to Test Claim Filing 02-TC-19

In a letter dated July 24, 2003, DOF responded to the *CalSTRS Service Credit* test claim filing. Generally, the letter makes the same legal arguments presented regarding the *CalSTRS Creditable Compensation* test claim, above: an increase in contributions to CalSTRS is not reimbursable under case law interpreting article XIII B, section 6. DOF also argues that other activities identified by the claimant, associated with the change in definition of creditable compensation or service credit, are non-reimbursable based on the same court decisions.

Comments on the Draft Staff Analysis for Consolidated Test Claim 01-TC-02, 02-TC-19

DOF filed comments dated March 13, 2007, on the draft staff analysis for the consolidated test claim, stating agreement that "the higher cost of compensation for district employees does not … impose a reimbursable state-mandated program under the California Constitution." However, DOF also states that:

> just as the increase in compensation is not a reimbursable state mandated cost, neither are the costs associated with the requirement that public school employers increase their CalSTRS contributions. These activities do not impose a program

that provides a service to the public and therefore, do not impose a reimbursable state-mandated program.

California State Teachers' Retirement System Position

Response to Test Claim Filing 02-TC-19

CalSTRS filed comments on the *CalSTRS Service Credit* test claim on July 24, 2003.

> CalSTRS believes the statutes listed in the test claim do not impose a new program or higher level of service within an existing program upon the claimant pursuant to Section 17514 of the Government Code because the provision of compensation and benefits to employees, and the method for paying such compensation and benefits can not be considered a 'program' or 'service.' The act of an employer providing compensation and benefits to its employees is not a unique function of local government or school employers, because it is a function common to all employers, whether public or private.

In addition, the CalSTRS response identifies several other reasons for denying reimbursement for specific statutes claimed: some "statutes establish optional programs;" two claimed statutes were in response to federal mandates, and therefore an exception under Government Code section 17556 applies; a large number of "statutes are administrative in nature, [and] considered part of the employer's responsibilities in offering a retirement program;" and several are non-substantive, code maintenance provisions.

Comments on the Draft Staff Analysis for Consolidated Test Claim 01-TC-02, 02-TC-19

CalSTRS filed comments on the draft staff analysis on January 30, 2007, continuing to maintain that no part of the test claim should be found to impose a reimbursable state-mandated program. CalSTRS asserts that the code sections at issue "are not separate and distinct from the underlying retirement program being offered by the local employers but, instead are part of and included in the retirement program being offered or in the case of Education Code section 22852 are required by or consistent with federal law." The arguments that are specific to particular provisions of the Education Code are discussed in the analysis below.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[12] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[13] "Its

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[12] Article XIII B, section 6, subdivision (a), provides:

> (a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[14] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[15] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[16]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[17] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[18] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[19] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[20]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[21] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an

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[13] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[14] *County of San Diego, supra,* 15 Cal.4th 68, 81.

[15] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[16] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[20] *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

[21] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

"equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[22]

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute or executive order to be subject to article XIII B, section 6 of the California Constitution, it must first constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service 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.[23] The court has held that only one of these findings is necessary.[24]

The Commission finds that to the extent that the test claim statutes require school districts to engage in activities relating to the State Teachers' Retirement System, they impose a program within the meaning of article XIII B, section 6 of the California Constitution because they impose unique requirements on school districts that do not apply generally to all residents and entities in the state.

However, much of the statutory scheme on the State Teachers' Retirement System was in place prior to 1975, so the analysis must continue to determine if each of the statutes and code sections alleged mandates a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6, or merely restates prior law. In addition, many of the Education Code sections pled in the test claims do not require any mandatory activities on the part of the school districts, and are also not subject to article XIII B, section 6.

Renumbering, restatements, and reenactments of prior law are not subject to article XIII B, section 6.

Statutes 1993, chapter 893:

At the outset, the Commission notes that the substance of many of the code sections pled were in effect well before the enactment of the test claim statutes, but were either renumbered or restated in a "newly enacted" code section. In particular, the State Teachers' Retirement System law was repealed and reenacted by Statutes 1993, chapter 893 (the first test claim statute alleged), and previously, the entire Education Code was renumbered and recodified by Statutes 1976, chapter 1010. Education Code section 3 provides: "[t]he provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

This is in accordance with the California Supreme Court decision, which held that "[w]here there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal

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[22] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose, supra,* 45 Cal.App.4th 1802, 1817.

[23] *County of Los Angeles, supra,* 43 Cal.3d at page 56.

[24] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time." (*In re Martin's Estate* (1908) 153 Cal. 225, 229.) The Commission finds that a renumbering, reenactment or restatement of prior law does not impose a reimbursable state-mandated program to the extent that the provisions and associated activities remain unchanged. The Commission specifically makes a finding that Statutes 1993, chapter 893, the recodification of the State Teachers' Retirement System, is not subject to article XIII B, section 6.

Education Code Section 22458:

Education Code section 22458, as pled, requires specific reporting from school district employers to CalSTRS, "regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year. The information shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules, and local board minutes."

However, this law was in effect prior to the statutes pled by claimant. Former Education Code section 22403.1, renumbered by Statutes 1993, chapter 893 as section 22458, read: "Each employing agency shall provide the system with copies of documents respecting the compensation to be paid to employees in that school year. The documents shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules, and local board minutes."

The 1996 and 1999 amendments made non-substantive changes, such as changing the term "employing agency" to "employer," the word "documents" to "information," and clarifying that the information sought is for those employees subject to CalSTRS, not *all* employees of the school district. Therefore the Commission finds that Education Code section 22458, as renumbered by Statutes 1993, chapter 893, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939, is not subject to article XIII B, section 6.

Education Code Section 22461:

Education Code section 22461 requires specific notices be provided to retired members who return to work for a school district as a direct employee, contracted employee, or independent contractor. Former Education Code section 23921, renumbered as section 22461 by Statutes 1993, chapter 893, provided, in pertinent part:

> Upon retaining the services of a retirant as an employee under the provisions of Section 23918 or 23919, the school district, community college district, county superintendent of schools, California State University, or other employing agency shall do both of the following:
>
> (a) Advise the retirant of the earnings limitation set forth in Sections 23918 and 23919.
>
> (b) Maintain accurate records of the retirant's earnings and report those earnings monthly to the system and the retirant regardless of the method of payment or the fund from which the payments were made.

Other than changing the word "retirant" to "retired member," and correcting the references to the Education Code to reflect current numbering, the current section is identical to prior law. Therefore, the Commission finds that Education Code section 22461, as renumbered by Statutes

1993, chapter 893, and amended by Statutes 1996, chapter 634, is not subject to article XIII B, section 6.

Many of the test claim statutes do not mandate local agencies to do anything and, thus, are not subject to article XIII B, section 6.

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.[25] The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."[26] A statute or executive order mandates a reimbursable "higher level of service" when, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, it increases the actual level of governmental service to the public provided in the existing program.[27]

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

As described below, there are a number of Education Code sections alleged in the test claim filing that are helpful in understanding the State Teachers' Retirement System, but they do not require any mandatory activities of school districts.

Education Code Sections 22000, 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5:

Education Code section 22000 simply indicates the short title of the act and states that the part "may be cited as the State Teachers' Retirement Law;" it does not mandate school districts to do anything, and is therefore not subject to article XIII B, section 6 of the California Constitution.

Nine of the claimed code sections provide definitions or describe member eligibility requirements relevant to CalSTRS, but do not require any mandatory activities to be performed by school district employers, and thus are not programs subject to article XIII B, section 6: including Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5. The substance of these sections will be briefly summarized below; the full text of each is included in the exhibits to the test claim filings.

Education Code section 22119.2 provides a definition of "creditable compensation" as: remuneration that is payable in cash by an employer to all persons in the same class of

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[25] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

[26] *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

[27] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

employees and is paid to an employee for performing creditable service," including salary. Prior law for the State Teachers' Retirement System defined "'compensation' and 'salary'" interchangeably under former Education Code section 22114, and the definition was similar, but not identical, to the current definition of "creditable compensation."[28] Education Code section 22119.5 defines "creditable service," as any listed activity performed by an individual in a credentialed, certificated, or otherwise standardized position.

Education Code section 22146 defines "member" of the Defined Benefit Program, as one "who has performed creditable service… and has earned creditable compensation." Prior law provided definitions of "member" for the retirement system, including teachers and other credentialed employees, librarians, counselors, superintendents and deputies.

Education Code section 22501 describes membership eligibility in the State Teachers' Retirement System for full-time employees. Education Code sections 22502, 22503 and 22504 describe membership eligibility for various non-full-time employees: those at 50% or greater time-base; substitute employees who work 100 or more days in a school year for one district; and certain hourly and daily part-time employees.

Education Code section 22711 is a directive to CalSTRS to grant service credit for compensated leave time by an employee who is "an elected officer of an employee organization," if both the member and member's employer makes the appropriate contributions to the Teachers' Retirement Fund as if the member were performing creditable service. Education Code section 22712.5 is a directive to CalSTRS to grant service credit for certain "community service teachers" who are serving in otherwise nonqualifying positions.

In summary, the Commission finds that Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5 define terms used in the code, are directives to CalSTRS, or otherwise do not require any mandatory activities to be performed by school district employers, and thus are not subject to article XIII B, section 6.

Education Code Sections 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, and 22851:

A number of the claimed code sections deal with "service credit," but these describe optional programs or otherwise do not require any mandatory activities of school districts, or were established by prior law.

Education Code section 22713 provides an option for school districts to establish regulations to allow a full-time employee to reduce their workload, but still receive full-time service credit. The section provides that districts "*may* establish regulations," and then if they do, those regulations must contain certain provisions, and the employer must follow other specific procedures to implement the optional "reduced workload program." Such requirements are factually similar to the case in *Kern High School Dist., supra,* 30 Cal.4th 727, 743, where the California Supreme Court found that when school districts voluntarily establish school site councils, costs of activities required for school site councils are not reimbursable because "the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in

[28] For example, the earlier definition of "compensation" and "salary" excluded payments for summer school employment, which is included under the current definition of "creditable compensation."

the underlying programs themselves." Therefore, the Commission finds that Education Code section 22713 does not require any mandatory activities of school districts, and is not subject to article XIII B, section 6.

Education Code section 22714 provides that a governing board of a school district, county office of education, or community college district (all are 'school districts' under Gov. Code, § 17519) may encourage retirement by offering an additional two years of service credit. The Commission finds that this is also an optional program and is not subject to article XIII B, section 6.[29]

Education Code section 22717 provides for service credit for accumulated sick leave. The only part of the code section that requires action on the part of the school district employer is subdivision (c). Subdivision (c) requires that "the employer shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for illness or injury that the member was entitled to on the final day of employment." Longstanding prior law (Ed. Code, § 22719, Stats. 1976, ch.1010, and previously Ed. Code § 14004, added by Stats. 1974, ch. 89) provided that "the school district or other employing agency shall certify to the Teachers' Retirement Board the number of days of accumulated and unused leave of absence for illness or injury to which the employee is entitled on his final day of employment." Therefore, the Commission finds that Education Code section 22717 does not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22717.5 provides for service credit "for each unused day of educational leave credit." However, the code section only applies to members who are retiring as state employees but elected to remain members of CalSTRS, rather than join the Public Employees' Retirement System (PERS), when they entered state service. The Commission finds that the reference to "employer" in this section is to the state employer – there is no local agency requirement subject to article XIII B, section 6.

Education Code section 22800 addresses corroborating statements needed by a member of the retirement system to substantiate claims of permissive and additional service credit. Prior versions of the code section (Ed. Code, § 22701, Stats. 1976, ch.1010, formerly Ed. Code § 13980.1, added by Stats. 1974, ch. 1153) have long provided that "[c]laims for creditable service shall be corroborated by a statement from the superintendent of schools or custodian of records of the employing agency or public school where the service was performed." Therefore, the Commission finds that Education Code section 22800 does not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22801 and 22803 also address issues of additional service credit that may be elected by a member of CalSTRS. Under section 22801, the law provides the terms of

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[29] Even if it is successfully argued that this is not an optional program, but one that must be undertaken if the district governing board determines it is in "the best interests of the district," the statute also requires that the school district must certify that the action "would result in a *net savings* to the district." Therefore a district cannot meet the requirement of showing that they have incurred increased costs mandated by the state.

payment of contributions by the member for such elected service credit, including interest. Subdivision (d) is the only portion of the law that addresses the school district employer, and states: "(d) The employer *may* pay the amount required as employer contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803." Section 22803 lists ten possibilities for elective service credit, such as teaching performed in California pubic universities or colleges, or time spent on certain approved leaves or sabbaticals. There is no state-mandated requirement in these sections for the school district employer to engage in any administrative activities, or even to pay a share of costs, therefore the Commission finds that Education Code section 22801 and 22803 are not subject to article XIII B, section 6.

Education Code section 22851 provides for elective service credit for the period of time a member has an "eligible period of service in the uniformed services." This is subject to applicable federal law (38 U.S.C.A. § 4301 et seq., "Employment and Reemployment Rights of Members of the Uniformed Services"), and only applies if they return to work in the same school district that they were employed with prior to their military service. In order to qualify, the member must pay the contribution amount that they would have paid should they have been continuously employed by the district. Education Code section 22851 does not require any state-mandated administrative activities or share of costs by the school district employer; any activities or responsibilities described are for the member, CalSTRS, or are otherwise required by federal law. Therefore, the Commission finds that Education Code section 22851 is not subject to article XIII B, section 6.

Increased Costs for an Employers' Share of Retirement Contributions Are Not Reimbursable Under Mandates Law.

Education Code Sections 22002, 22950 and 22951:

Some of the code sections claimed discuss the employer's share of contribution towards the defined benefit program, and specify the percentages of compensation required. Claimants assert that any increased employer costs for retirement contributions, when compared to prior law, are reimbursable.

Education Code section 22002, subdivision (b) includes the Legislature's policy statement that "[e]mployers shall contribute a percentage of the total creditable compensation on which member contributions are based." This is derived from longstanding prior law, which has been amended to replace the term "salary" with "creditable compensation."[30] (Former Ed. Code, § 22002, Stats. 1976, ch.1010, and previously the 1959 Ed. Code, § 13804.)

Education Code section 22950 and 22951 establish the percentages of creditable compensation that the school district employer must pay. Education Code section 22950, subdivision (a) requires that "(a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based." Former Education Code section 14100[31] provided that the school districts "shall contribute monthly the following percentages of the total salaries upon which members' contributions are based:"

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[30] See the text regarding Education Code section 22119.2, at page 12.

[31] The section was added by Statutes 1971, chapter 1305, and then renumbered as section 22950 by Statutes 1976, chapter 1010 (the 1976 reorganization of the Education Code).

(a) For fiscal year ending June 30, 1973 ……. 3.2%

(b) For fiscal year ending June 30, 1974 ……. 4%

(c) For fiscal year ending June 30, 1975 ……. 4.8%

(d) For fiscal year ending June 30, 1976 ……. 5.6%

(e) For fiscal year ending June 30, 1977 ……. 6.4%

(f) For fiscal year ending June 30, 1978 ……. 7.2%

(g) For all fiscal years after June 30, 1978 …… 8%

Article XIII B, section 6, subdivision (a)(3), provides that the Legislature need not fund "Legislative mandates enacted prior to January 1, 1975." The law requiring an eight percent employer contribution after June 30, 1978, was enacted in 1971, therefore this is not subject to article XIII B, section 6. The law now requires that the eight percent contribution is based on "creditable compensation," as defined by Education Code section 22119.2, instead of the old definition of "salaries," under former Education Code section 22114. The definitions are similar, but there are differences that could result in increased costs to the school district employer. For example, under the amended law, a school district is responsible for the employers' share of contribution for summer school salary earned by an employee. This was excluded under the old definition of "compensation" and "salary," but is included in the definition of "creditable compensation."

Education Code section 22951 provides that school district employers shall contribute an additional quarter percent (0.25%) over any other contribution required. This law was derived from former section 23400.1, which was first added to the Education Code by Statutes 1985, chapter 1597.[32] Like Education Code section 22950, above, the percentage is now based on the statutory definition of creditable compensation, where it used to be based on "salaries."

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has repeatedly ruled that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6.[33] The Court also found in *Lucia Mar, supra,* 44 Cal.3d 830, 835:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.

Comments filed by the state agencies, DOF and CalSTRS, both assert that case law interpreting article XIII B, section 6, including *County of Los Angeles, supra*, *City of Anaheim v. State of*

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[32] Statutes 1985, chapter 1597 was not included in the test claim allegations.

[33] *County of Los Angeles, supra,* 43 Cal.3d at page 54; see also, *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

California (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, results in a finding that "the provision by public school employers of monthly [State Teachers' Retirement System] contributions on behalf of their employees is not a program that provides a service to the public or that is unique to local government."[34]

Claimant, Santa Monica CCD, argues that the cases are distinguishable from the test claim at issue here. First, the CalSTRS statutes and teacher pensions are unique to local government, which, the claimant states, is distinct from the workers' compensation cases of *County of Los Angeles* and *City of Richmond*.

The claimant also argues that this claim is distinguishable from *City of Anaheim*, which dealt with higher local government employer costs for PERS. The claimant argues that in contrast to the *City of Anaheim* statute that resulted in higher costs to local agencies, but did not require action except on the part of the state agency, CalPERS, the instant test claim statutes require that the claimant "'do something', i.e. it requires it to make contributions to CalSTRS in situations where none were required prior to that legislation."[35]

The Commission notes that making contributions to CalSTRS is not new – an employer share of contributions to CalSTRS has been continuously required under current and previous versions of Education Code section 22950.[36] Even before the test claim statutes, the amount contributed by the school district employer would change regularly depending on the number of employees eligible, and their current compensation. In order for the claimant's argument distinguishing the *Anaheim* case to succeed, they must still prove that the statutes in fact mandate a new program or higher level of service in an existing program.

In *County of Los Angeles, supra,* 43 Cal.3d 46, the Court addressed the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide to their employees. The Supreme Court recognized that workers' compensation is not a new program and, thus, the court determined whether the legislation imposed a higher level of service on local agencies.[37] The court defined a "higher level of service" as "state mandated *increases in the services provided* by local agencies in existing programs." (Emphasis added.)

> Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."

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[34] DOF's December 4, 2001 comments on test claim 01-TC-02, page 3, and the July 24, 2003 comments on test claim 02-TC-19, page 3.

[35] Claimant, Santa Monica CCD's rebuttal to DOF, dated August 15, 2003, pages 3-4.

[36] The actual mechanisms for making those payments is governed by Education Code section 23000 et seq., also longstanding prior law, which was not included in the test claim pleadings.

[37] *County of Los Angeles, supra,* 43 Cal.3d at page 56.

The Supreme Court in *County of Los Angeles* continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.[38]

The court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required.

> Section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers … In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state … Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6. (*Id.* at pp. 57-58, fn. omitted.)

Although "[t]he law increased the cost of employing public servants, … it did not in any tangible manner increase the level of service provided by those employees to the public." (*San Diego Unified School Dist., supra,* 33 Cal.4th 859, 875.) In this sense, the present consolidated test claim is indistinguishable from the analysis presented by the Court in *County of Los Angeles*.

City of Richmond, supra, 64 Cal.App.4th 1190, similarly held that requiring local governments to provide death benefits to local safety officers, under both PERS and the workers' compensation system, did not constitute a higher level of service to the public. The court stated:

> Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.[39]

The court also found that "[a]lthough a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate."[40]

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[38] *Id.* at pages 56-57.

[39] *City of Richmond, supra,* 64 Cal.App. 1190, 1196.

[40] *Id.* at page 1197.

In *City of Anaheim, supra*, 189 Cal.App.3d 1478, the court determined that an increase in PERS benefits to retired employees, which resulted in a higher contribution rate by local governments, does not constitute a higher level of service to the public. In this case the court found that:

> While focusing on the exceptions to reimbursement, City conveniently presumes that [the test claim statute] mandated a higher level of service on local government, a prerequisite to reimbursement when an existing program is modified.
>
> City's claim for reimbursement must fail for the following reasons: (1) [the test claim statute] did not compel City to do anything, (2) any increase in cost to City was only incidental to PERS' compliance with [the test claim statute], and (3) pension payments to retired employees do not constitute a "program" or "service" as that term is used in section 6.[41]

Here, Santa Monica CCD argues that "[t]he test claim legislation alleges that certain employees, previously required to be excluded in the retirement program, now be included in the program. The test claim legislation alleges that certain employees' activities, previously excluded from the retirement program, now be included in that program. Therefore, those portions of the mandated retirement program are a 'new program.'" (Aug. 15, 2002 rebuttal letters, pp. 4-5.) The court in *Anaheim* found that an increase in pension benefits to employees was not a "program" or "service" within the meaning of article XIII B, section 6.[42]

Also, like the claimant here, the claimant in *City of Anaheim*:

> argues that since [the test claim statute] specifically dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities. [Footnote omitted; emphasis in original.]

However, the court continued:

> Such an argument, while appealing on the surface, must fail. As noted above, [the statute] mandated increased costs to a state agency, not a local government. Also, PERS is not a program administered by local agencies.
>
> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies. ... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) *Similarly,* City *is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public.* [Emphasis added, footnote omitted.]

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[41] *City of Anaheim, supra*, 189 Cal.App.3d at page 1482.

[42] *Ibid.*

Therefore, the court concluded that the test claim statute did "not fall within the scope of section 6."[43]

In *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 876-877, the Court held:

> Viewed together, these cases (*County of Los Angeles, supra,* 43 Cal.3d 46, *City of Sacramento, supra,* 50 Cal.3d 51, and *City of Richmond, supra,* 64 Cal.App.4th 1190) illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514. [Emphasis in original.]

The test claim statutes create a situation, as in *City of Anaheim*, where the employer may be faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, the Commission finds that increased costs resulting from the test claim statutes, Education Code sections 22002, 22950, and 22951, without more, are not subject to article XIII B, section 6.

Issue 2: Do the remaining test claim statutes mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Education Code Sections 22455.5, 22460, 22509, 22718, 22724 and 22852:

Finally, a number of the test claim statutes require that the school district employer engage in reporting and notice activities. The state agencies argue that these claims should be rejected on the same rationale as the case law discussed above. The Commission disagrees. Those cases did not include facts where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged.

Education Code section 22455.5, as added by Statutes 1994, chapter 603, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939 requires that employers provide information to new employees about the defined benefit plan. The Commission finds that the following is a new activity required by Education Code section 22455.5, subdivision (b), resulting in a new program or higher level of service:

- Employers shall make available criteria for membership, including optional membership, in a timely manner to all persons employed to perform creditable service subject to coverage by the Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

  Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS.

Education Code section 22460, repealed and reenacted by Statutes 2000, chapter 1021, requires specific notification to employees who terminate with less than five years of credited service.

[43] *Id*. at pages 1483-1484.

The law was derived from former Education Code section 23108, renumbered as section 22460 by Statutes 1993, chapter 893, which read as follows:

> Employing school districts and other employing agencies shall notify all members who terminate employment with less than five years' credited California service that the only benefit for which they are eligible at any time is the refund of accumulated contributions, the rate of interest which will be earned, and actions which may be taken by the board if such contributions are not withdrawn. Employing school districts and other employing agents shall transmit such information to the member as part of the usual separation documents.

The information required for the notice is slightly different now, including references to the Defined Benefit Supplement account; therefore, the Commission finds that Education Code section 22460, as repealed and reenacted, mandates a new program or higher level of service for the following one-time activity:

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision (a)(1) – (3), regarding the Defined Benefit Supplement account.

Education Code section 22509, as repealed and reenacted by Statutes 1996, chapter 383, and amended by Statutes 1997, chapter 838, requires that for new employees who may choose between membership in CalPERS or CalSTRS, the school district employer "shall inform the employee of the right to make an election and shall make available to the employee written information" provided by CalPERS and CalSTRS, to assist in the decision. The Commission finds that this is a new notice requirement when compared to prior law, and Education Code section 22509, subdivision (a) mandates a new program or higher level of service for the following activity:

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election to CalSTRS or CalPERS and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

Education Code sections 22718 and 22724 address service credit authorized for "excess sick leave." Excess sick leave is sick leave granted by an employer at a rate greater than "one day per pay period of at least four weeks." If excess sick leave is granted by an employer and is not entirely used, it can increase a member's service credit; at the retirement of the member, the employer will be billed for the present value of the service credit. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer's increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6.

However, Education Code section 22718, as amended by Statutes 1999, chapter 939, requires for the first time that "the employer shall also certify the number of unused excess sick leave days." Education Code section 22724, as added by Statutes 1999, chapter 939, describes the method of

calculation for the certification of excess sick leave. The Commission finds that this certification requirement results in a new report to the state when compared to prior law, and therefore Education Code sections 22718, subdivision (a)(1)(A), and section 22724, mandate a new program or higher level of service for the following activities:

- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a).
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes.[44]

Education Code section 22852 provides for employer contributions for elective service credit for members of the armed services who are reemployed with a school district following a period of military service. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer's increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6. However, Education Code section 22852, as added and amended by the test claim statutes, requires a reporting activity that was not required under prior law.

CalSTRS January 30, 2007 comments, page 7, maintain that "this provision is consistent with Federal Law…and could be considered a federal mandate." The Commission finds no federal law requiring employers to provide information to the state regarding a returning employee in the manner required by Education Code section 22852. Thus, the Commission finds Education Code section 22852, subdivision (e) mandates a new program or higher level of service for the following activity:

- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment.

Finally, CalSTRS argues that all of the activities identified result in costs that are "modest, incidental, or de minimus,"[45] and are thus not reimbursable pursuant to the California Supreme Court's decision in *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890. The *San Diego Unified School Dist.* decision must be examined in context. The portion of the decision cited addresses the mandate claim for providing due process in discretionary expulsion proceedings. The decision states that "challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimus—should be treated as part and parcel of the federal mandate." The Court recognized that it was unrealistic to expect the

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[44] CalSTRS January 30, 2007 comments, page 6, argue that the "record retention requirement" is not reimbursable because personnel records are required to be kept a minimum of two years under prior law. The new activity identified is to "submit sick leave records of past years," upon request. There is no evidence in the record that this activity was required by prior law.

[45] CalSTRS Comments, January 30, 2007, page 4.

Commission to determine which statutory procedures were required for minimum federal standards of due process, versus any "excess" due-process standards only required by the state.

There is no evidence that the statutes creating or altering notice and reporting requirements presently before the Commission are "part and parcel" of a federal mandate, and they can easily be separated from the other costs of the retirement program. When a new program or higher level of service is identified, the cost threshold for proving a reimbursable state mandated program is very low; currently only $1000 is required in order to file a reimbursement claim. CalSTRS argues that because they provide the school district employers with "the necessary forms and notice materials required to satisfy the notice and reporting requirements, any costs to the employer are shared by CalSTRS and would not solely be reimbursable to the local agency or school district."[46] The Commission finds that for the activities identified, the claimant still has distribution, administrative and reporting responsibilities, regardless of who printed the forms or brochures. If a claimant has increased costs of $1000 for the identified mandated activities, then they are eligible to make a claim for reimbursement.

Issue 3: Do the test claim statutes impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. Co-claimants, Lassen COE and San Luis Obispo COE, estimated mandated costs in excess of $200, which was the statutory threshold for filing a test claim in 2001. Claimants, Grant and Santa Monica CCD, each alleged mandated costs in excess of $1000, as did a declarant, San Diego County Office of Education.

All of the claimants also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, the Commission agrees and finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514.

[46] *Ibid.*

CONCLUSION

The Commission concludes that Education Code sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852, subdivision (e), impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Employers shall make available criteria for membership, including optional membership, in a timely manner to all persons employed to perform creditable service subject to coverage by the Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

  Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS. (Ed. Code, § 22455.5, subd. (b).)[47]

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision (a)(1) – (3), regarding the Defined Benefit Supplement account. (Ed. Code, § 22460; one-time activity.)[48]

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election to CalSTRS or CalPERS and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. (Ed. Code, § 22509, subd. (a).)[49]

- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a). (Ed. Code, § 22718, subd. (a)(1)(A).)[50]

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[47] As added and amended by Statutes 1994, chapter 603, Statutes 1996, chapter 634, and Statutes 1999, chapter 939.

All of the approved statutes and activities were pled in the test claim *CalSTRS Service Credit* (02-TC-19), filed on May 12, 2003, by Santa Monica CCD. Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

[48] As repealed, reenacted and amended, by Statutes 2000, chapter 1021.

[49] As repealed, reenacted and amended, by Statutes 1996, chapter 383, and Statutes 1997, chapter 838.

[50] As amended by Statutes 1999, chapter 939.

- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes. (Ed. Code, § 22724, subd. (b).)[51]
- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment. (Ed. Code, § 22852, subd. (e).)[52]

The Commission concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

[51] As added by Statutes 1999, chapter 939.

[52] As added and amended by Statutes 1996, chapter 680, and Statutes 1998, chapter 965.