

**COMMISSION ON STATE MANDATES**

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May 16, 2014

Mr. Michael Byrne  
Department of Finance  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of First Hearing**

Mandate Redetermination Request, 13-MR-01

*Fire Safety Inspections of Care Facilities, (01-TC-16)*

Health and Safety Code Section 13235(a); as added or amended by Statutes 1989, Chapter 993; Statutes 2009, Chapter 12 (ABX4 12)

Department of Finance, Requester

Dear Mr. Byrne:

The draft staff analysis and proposed statement of decision for the first hearing on the above-named matter is enclosed for your review and comment.

### **Written Comments**

Written comments may be filed on the draft staff analysis by **June 6, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

### **Hearing**

This matter is set for hearing on **Friday, July 25, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about July 11, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Giny Chandler at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

Hearing Date: July 25, 2014

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**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**DRAFT PROPOSED DECISION**

Health and Safety Code Section 13235(a)

Statutes 1989, Chapter 993

*Fire Safety Inspections of Care Facilities, (01-TC-16)*

As Alleged to be Modified by:

Statutes 2009-2010, Chapter 12 (ABX4 12)

13-MR-01

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On March 29, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Fire Safety Inspections of Care Facilities*, 01-TC-16 test claim.<sup>1</sup> The Commission found that Health and Safety Code section 13235(a) imposed a reimbursable new program or higher level of service upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission approved the test claim for the following reimbursable activities relating to the preinspection of a facility:

1. The preinspection of community care facilities, residential care facilities for the elderly, and child daycare facilities;
2. The consultation and interpretation of applicable fire safety regulations for the prospective facilities licensee; and
3. Written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

The Commission also found that inspection activities relating to the final fire clearance approval are not reimbursable.

Statutes 2009-2010, Extraordinary Session, chapter 12 amended the fee authority provision in Health and Safety Code section 13235(a) as follows in underline and strikeout:

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<sup>1</sup> Exhibit A, Test Claim Statement of Decision adopted March 26, 2006.

A fee of not more than fifty dollars (\$50) equal to, but not exceeding, the actual cost of the preinspection services may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars (\$100) equal to, but not exceeding, the actual cost of the preinspection services may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

On July 29, 2013, the Department of Finance (DOF) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570.<sup>2</sup> Pursuant to 17570, a request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” Thus, based on the filing date of July 29, 2013, the period of reimbursement potentially affected by this decision begins July 1, 2013. DOF alleges that Health and Safety Code section 13235(a), as amended, constitutes a subsequent change in law as defined in section 17570. DOF further alleges that, pursuant to Government Code section 17556(d), this change in law results in a modification of the state’s liability under the test claim statute. DOF specifically states “the subsequent change in law provides local agencies authority to charge fees sufficient to cover the full costs of the mandated activities in the Fire Safety Inspections of Care Facilities program.”<sup>3</sup>

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The Government Code provides for a two hearing process. The Commission’s regulations state that “the first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.”<sup>4</sup> The regulations state that the Commission “shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>5</sup> The regulations further state that “[i]f the Commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”<sup>6</sup>

Therefore, the sole issue before the Commission at this first hearing is whether Finance, as the requester, has made an adequate showing that the state’s liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

### **Staff Analysis**

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<sup>2</sup> Exhibit B, Request for Mandate Redetermination filed July 29, 2013.

<sup>3</sup> Exhibit B, Request for Mandate Redetermination, filed July 29, 2013, at p. 6.

<sup>4</sup> California Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. \_\_).

<sup>5</sup> *Ibid.*

<sup>6</sup> California Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. \_\_).

Government Code section 17556(d) provides that the Commission *shall not find* costs mandated by the state, within the meaning of article XIII B, section 6, if “[t]he local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Section 17556(d) also states that this rule “applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.”<sup>7</sup>

Staff finds that Statutes 2009-2010, Extraordinary Session, chapter 12 (ABX4 12) constitutes a subsequent change in law, as defined in section 17570. Statutes 2009-2010, chapter 12 provides local government with the authority to charge a fee equal to the actual cost of preinspection services. Thus, Statutes 2009-2010, chapter 12 provides fee authority to impose fees, and, pursuant to Government Code section 17556(d), the Commission shall not find costs mandated by the state where a local government has such fee authority. Therefore DOF has made an adequate showing that the state’s liability under the 01-TC-16 test claim decision has been modified, and DOF has a substantial possibility of prevailing at the second hearing.

### **Staff Recommendation**

Staff recommends that the Commission adopt this statement of decision, and pursuant to Government Code section 17570(b)(d)(4), direct staff to provide notice of the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for September 26, 2014.

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

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<sup>7</sup> Government Code section 17556 (As amended by Stats. 2010, ch. 719 (SB 856)).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
FIRST HEARING: ADEQUATE SHOWING  
ON:

Health and Safety Code Section 13235(a);  
Added by Statute 1989, Chapter 993.

*Fire Safety Inspections of Care  
Facilities, 01-TC-16*

As Alleged to be Modified by:  
Statutes 2009-2010, Chapter 12 (ABX4 12)

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-01

*Fire Safety Inspections of Care Facilities,  
(01-TC-16)*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500,  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLES 7 and 10.

*(Adopted July 25, 2014)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 25, 2014. [Witness list will be included in the final 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 section 17500 et seq., title 2, California Code of Regulations 1189 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

**Summary of the Findings**

The Commission finds that the Department of Finance (DOF) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Fire Safety Inspections of Care Facilities, 01-TC-16* program has been modified based upon a subsequent change in law. Specifically, Statutes 2009-2010, Extraordinary Session, chapter 12 provided local agencies with the authority to charge a fee equal to the reasonable cost of providing the mandated preinspection activities under Health and Safety Code section 13235(a). Government Code section 17556(d) proscribes a finding of cost mandated by the state where the

local government has fee authority sufficient to cover the costs of the mandate. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

## COMMISSION FINDINGS

### I. Chronology

- 03/29/06 The Commission adopted the test claim statement of decision for *Fire Safety Inspections of Care Facilities*, 01-TC-16.<sup>8</sup>
- 03/28/08 The Commission adopted parameters and guidelines.<sup>9</sup>
- 07/28/09 The Legislature enacted ABX4 12 to remove the cap from the fee authority for the program.
- 07/29/13 DOF filed a request for redetermination on test claim 01-TC-16.<sup>10</sup>
- 09/08/13 Commission staff deemed the filing complete.
- 09/09/13 The State Controller's Office, Division of Accounting and Reporting, submitted comments on the request.

### II. Background

#### Health and Safety Code Section 13235(a) and Test Claim Decision

Health and Safety Code section 13235 was amended in 1989 (Stats. 1989, ch. 993). The purpose of the amendments was to ensure that community care facilities, residential care facilities for the elderly, and child care facilities, during the process of being licensed by the State Department of Social Services, timely receive correct fire clearance information from the local fire enforcing agency or the State Fire Marshal. Upon receipt of a request from a prospective licensee, the local fire department or State Fire Marshal, whichever has primary jurisdiction, is required to conduct a preinspection of the facility prior to the fire clearance approval. At the time of preinspection, the applicable fire enforcing agency provides consultation and interpretation of the fire safety regulations that are to be enforced in order to obtain the clearances necessary to obtain a license.

On March 29, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Fire Safety Inspections of Care Facilities*, 01-TC-16 test claim. The Commission found that Health and Safety Code section 13235(a), imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the Californian Constitution and Government Code section 17514.

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<sup>8</sup> Exhibit A, Test Claim 01-TC-16, Statement of Decision, adopted March 29, 2006.

<sup>9</sup> Exhibit C, Test Claim 01-TC-16, Parameters and Guidelines, adopted March 28, 2008.

<sup>10</sup> Exhibit B, Request for Mandate Redetermination, filed July 29, 2013.

The Commission approved this test claim for the following reimbursable activities relating to the preinspection of the facility:

1. The preinspection of community care facilities, residential care facilities for the elderly, and child day care facilities;
2. The consultation and interpretation of applicable fire safety regulations for the prospective facility licensee; and
3. Written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.<sup>11</sup>

Former Health and Safety Code section 13235(a), specifically allowed the following fees to be charged for the preinspection of a facility: 1) not more than \$50 for a facility serving 25 or fewer persons; and 2) not more than \$100 for a facility serving more than 25 persons. In its Statement of Decision, the Commission found that this limited fee authority did not cover the actual cost of the program, but identified it as offsetting revenue.<sup>12</sup>

Statutes 2009-2010, Extraordinary Session, chapter 12 amended the fee authority provision in Health and Safety Code section 13235(a) as follows in underline and strikeout:

A fee of not more than fifty dollars (\$50) equal to, but not exceeding, the actual cost of the preinspection services may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars (\$100) equal to, but not exceeding, the actual cost of the preinspection services may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

As amended, section 13235(a) provides fee authority for the actual cost of preinspection services.

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has modified the state's liability for reimbursement. Section 17570 calls for a two hearing process; at the first hearing, the requestor must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6, subdivision (a) of the California Constitution."<sup>13</sup>

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

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6

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<sup>11</sup> Exhibit A, Test Claim 01-TC-16, Statement of Decision, p. 13.

<sup>12</sup> Exhibit A, Test Claim 01-TC-16, Statement of Decision, pp.12-13.

<sup>13</sup> California Code of Regulations, title 2, section 1190.5(a)(1).

of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>14</sup>

An “adequate showing” is defined in the Commission’s regulations as follows:

The Commission shall find that the requestor has made an adequate showing if it finds the request, when considered in the light of all the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>15</sup>

If the Commission finds, at the first hearing, that the requestor has made an adequate showing, “the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on the request to adopt a new test claim decision to supersede the previously adopted test claim decision.”<sup>16</sup>

### **III. Position of the Parties**

#### Department of Finance, Requester

DOF submitted a request to adopt a new test claim decision regarding Health and Safety Code section 13235(a), pursuant to Government Code section 17570.<sup>17</sup> DOF asserts that Statutes 2009-2010, chapter 12 (ABX4 12) constitutes a subsequent change in law, as defined in section 17570, which when analyzed in light of Government Code section 17556, results in a change in the state’s liability under the test claim. DOF asserts that the amendment to Health and Safety Code section 13235(a) provides authority to charge fees sufficient to cover the full costs of the mandated activities in the *Fire Safety Inspection of Care Facilities* Program. Therefore, DOF asserts the state is no longer obligated to reimburse any costs for the mandated activities, pursuant to Government Code sections 17570 and 17556(d).

#### State Controller’s Office

The State Controller’s Office (SCO) filed comments concurring with the DOF request for redetermination.<sup>18</sup>

### **IV. Discussion**

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. In order 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 that a particular statute or

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<sup>14</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>15</sup> California Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. \_\_).

<sup>16</sup> California Code of Regulations, Title 2, section 1190.5(a)(5)(B) (Register 2014, No. \_\_).

<sup>17</sup> Exhibit B, Request for Mandate Redetermination filed July 29, 2013.

<sup>18</sup> Exhibit D, SCO, Division of Accounting and Reporting, Comments filed September 9, 2013.

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.<sup>19</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>20</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>21</sup>

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is intended, pursuant to the Government Code and the Commission’s regulations, to determine only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, analysis of section 17556(d), as well as consideration of the comments submitted by interested parties, will be limited to whether the request, “when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>22</sup>

A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

**A. A Subsequent Change in Law is Alleged Resulting from Statutes 2009-2010, Chapter 12.**

On March 29, 2006, the Commission adopted a test claim decision for the *Fire Safety Inspections of Care Facilities*, 01-TC-16 test claim. The Commission found that Health and Safety Code section 13235(a), as amended by Statutes 1989, chapter 993 imposed a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On March 28, 2008, the Commission adopted parameters and guidelines for reimbursement of the claims under the statute, which outlined the reimbursable activities as follows:

A. One-Time Activity (one time per employee)

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<sup>19</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

<sup>20</sup> *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

<sup>21</sup> *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.

<sup>22</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. \_\_\_).

Training for each new fire inspector assigned to preinspection of care facilities, pursuant to Health and Safety Code section 13235, subdivision (a). A maximum of four hours of training is allowable per employee.

B. Ongoing Activities

1. Conduct preinspections of community care facilities, residential care facilities for the elderly, and child day care facilities upon receipt of a request from a prospective licensee of such a facility, before final fire clearance approval. More than one preinspection per facility as deemed necessary by the local fire agency is reimbursable.
2. Provide consultation and interpretation of applicable fire safety regulations for the prospective facility licensee.
3. Provide a written notice to the prospective licensee of the specific fire safety regulations that shall be enforced in order to obtain the final fire clearance approval.
4. Maintain files relating solely to preinspection activities pursuant to Health and Safety Code section 13235, subdivision (a).<sup>23</sup>

Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session, chapter 12 (AB 12), amended section 13235(a) to provide as follows in underline and strikeout:

(a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire safety regulations, and shall notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval. A fee of not more than fifty dollars (\$50) equal to, but not exceeding, the actual cost of the preinspection services may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars (\$100) equal to, but not exceeding, the actual cost of the preinspection services may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.<sup>24</sup>

In its request for mandate redetermination,<sup>25</sup> DOF asserts that the amendment of Health and Safety Code section 13235(a) granted local agencies authority to charge a fee sufficient to cover

<sup>23</sup> Exhibit C, 01-TC-16, Parameters and Guidelines, adopted March 28, 2008, pp.2-3.

<sup>24</sup> Health and Safety Code section 13235(a), amended by Statutes 2009-2010 4<sup>th</sup> Extraordinary session, chapter 12 (AB 12), § 14, effective July 28, 2009.

<sup>25</sup> Exhibit B, Request for Mandate Redetermination, filed July 29, 2013.

all of the costs attributable to the mandated activities under Health and Safety Code section 13235(a).<sup>26</sup> As a result, DOF maintains that a new test claim decision must issue finding there are no costs mandated by the state pursuant to Government Code section 17556(d). DOF asserts that the amendment to section 13235(a) is a “subsequent change in law” as defined in Government Code section 17570.<sup>27</sup>

**B. Section 17556(d) is Not Self-Executing, but Requires Commission Action Pursuant to Section 17570, Where a Commission Decision on the Test Claim Statutes has Been Previously Adopted.**

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds that “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556 (d), in *County of Fresno v. State of California*.<sup>28</sup> The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>29</sup>

Accordingly, in *Clovis Unified School District v. Chiang*, the court found that the SCO was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision, the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”<sup>30</sup> The

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<sup>26</sup> Exhibit B, Request for Mandate Redetermination, p. 6.

<sup>27</sup> Exhibit B, Request for Mandate Redetermination, p. 6.

<sup>28</sup> *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

<sup>29</sup> *Id.*, at p. 487.

<sup>30</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

court further noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”<sup>31</sup>

Section 17556(d) further provides that the limitation “applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.” In the context of fee authority enacted *after the test claim decision* on the subject matter has been adopted, an analysis under section 17556(d) cannot be entertained absent the redetermination process provided in section 17570. The Commission’s process is the sole and exclusive venue in which eligible claimants vindicate the reimbursement requirement of article XIII B, section 6, and the Commission’s decision on a test claim is final and binding, absent judicial review.<sup>32</sup> A later-enacted statute providing fee authority for a mandated program cannot, of its own force, undermine the Commission’s mandate determination in a prior test claim decision. Section 17570 thus provides the mechanism for considering section 17556(d) when there is a subsequent change in law, as defined, “material to the prior test claim decision, that may modify the state’s liability” pursuant to article XIII B, section 6.

“Subsequent change in law,” is defined in section 17570(a)(2) as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>33</sup>

Here, the amendments effected by Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session , chapter 12 (AB 12), authorize local fire enforcing agencies to charge a fee “equal to, but not exceeding the actual cost of the preinspection service,” implicate a section 17556(d) analysis, and therefore the amendments constitute a subsequent change in law, as defined.

### **C. DOF has Made an Adequate Showing That the State’s Liability has Been Modified.**

DOF brings this request to adopt a new test claim decision relying on Government Code section 17556(d), and Statutes 2009- 2010, 4<sup>th</sup> Extraordinary Session, chapter 12 (AB 12). Statutes 2009-2010, chapter 12 constitutes, by definition, a subsequent change in law, as discussed above.

The issue for this first hearing is whether DOF has made an adequate showing that the state’s liability has been modified based on a subsequent change in law. The Commission shall find that the requester has made an adequate showing if it finds “that the request, when considered in

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<sup>31</sup> *Ibid.*

<sup>32</sup> *CSBA I, supra*, 171 Cal.App.4th 1183, at pp. 1199-1200.

<sup>33</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>34</sup>

Here, a section 17556 analysis, presuming, as the Commission must, the constitutionality of the Government Code, would likely result in a finding that the fees authorized by the amended code section are sufficient to fully fund the costs of the program and so defeat a mandate finding. If the “local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service” the Commission is proscribed from finding increased costs mandated by the state. It is sufficient, at this time, to determine that there is a substantial possibility that the requester will prevail at the second hearing, on the basis of section 17556(d), and the manner in which the test claim statute has been modified by a subsequent change in law.

#### **IV. CONCLUSION**

Based on the foregoing, the Commission finds that DOF has made an adequate showing at this first hearing to proceed to a second hearing to determine whether to adopt a new test claim decision.<sup>35</sup> The Commission hereby directs Commission staff to notice the second hearing and to prepare a full mandates analysis on the issue of whether the Commission shall adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision in 01-TC-16.

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<sup>34</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. \_\_\_).

<sup>35</sup> See Government Code section 17570(d) (Stats. 2010, ch. 719 (SB 856)).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 16, 2014, I served the:

**Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of First Hearing**

Mandate Redetermination Request, 13-MR-01

*Fire Safety Inspections of Care Facilities, (01-TC-16)*

Health and Safety Code Section 13235(a); as added or amended by Statutes 1989, Chapter 993; Statutes 2009, Chapter 12 (ABX4 12)

Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 16, 2014 at Sacramento, California.



---

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# COMMISSION ON STATE MANDATES

## Mailing List

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**Claim Number:** 13-MR-01

**Matter:** Fire Safety Inspections of Care Facilities (01-TC-16)

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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