

ITEM 7

STAFF ANALYSIS

REQUEST FOR RECONSIDERATION

**of Statement of Decision and Parameters and Guidelines
Adopted April 19, 2013**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

California Special Districts Association, Requester

EXECUTIVE SUMMARY

This is a request for reconsideration made pursuant to Government Code section 17559 and section 1188.4 of the Commission on State Mandates' (CSM) regulations. The California Special Districts Association (CSDA) requests reconsideration of the Commission's statement of decision and parameters and guidelines for the *California Public Records Act* (CPRA) program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as "any city, county, and city and county, or any school district as defined in Government Code section 17519," but omits special districts required to comply with the CPRA.

Within a limited statutory timeframe, the Commission is authorized to reconsider a prior final decision to consider only an alleged error of law. Any party, interested party, or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law. The petition must be filed within 30 days after the statement of decision is issued. Before the Commission can fully consider the request, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted. Five affirmative votes are required to grant the request for reconsideration and schedule the matter for a hearing on the merits. If no action is taken on the request, or the request to grant reconsideration does not receive five affirmative votes, the petition is deemed denied.

Staff Analysis

Staff recommends that the Commission grant the request for reconsideration and direct staff to schedule a second hearing on the merits of the request.

Except for certain provisions relating only to school districts, the activities mandated by the CPRA, by definition, apply equally to all levels of government.¹ The test claim statement of decision acknowledged that “local agencies” were eligible for reimbursement under the program, and “local agencies” are defined in Government Code section 17518 to include special districts.

The decision on the parameters and guidelines, however, did not address the issue of eligible claimants, but was primarily focused on the scope of reimbursable activities. The draft staff analysis and proposed statement of decision and parameters and guidelines identified eligible claimants as counties, cities, and school districts as defined, but did not include special districts or the more general phrase “local agency as defined in Government Code section 17518,” which includes special districts. No comments on the draft analysis for that issue were received. The final proposed decision did not address the issue of special districts as eligible claimants for this program, and kept the same language as the draft analysis identifying eligible claimants as counties, cities, and school districts as defined. The issue was not identified until CSDA filed its request for reconsideration on May 2, 2013.

The identification of eligible claimants in the decision and the parameters and guidelines cannot be corrected by staff as a “clerical error” under section 1188.2 of the regulations because the issue will require further legal analysis. The CPRA definition of “local agency” is very broad and is intended to cover any type of local public agency, and certainly those who are eligible to claim reimbursement under article XIII B, section 6. The courts have made clear, however, that despite the broad statutory definitions of “local agency,” reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.² Article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.³ There are many special districts that receive their revenue solely from fees, or receive some of their funding through fees that can be applied to this program. Thus, not all special districts are eligible to claim reimbursement under article XIII B, section 6 and some eligible districts may also have fee authority that applies to this program.

Therefore, the only way to properly address the issue and to correct the identification of eligible claimants is through this request for reconsideration.

Staff Recommendation

Staff recommends that the Commission grant the CSDA’s request for reconsideration and direct staff to schedule a second hearing on the merits of the request to determine if the statement of decision on the parameters and guidelines adopted April 19, 2013, contains the error of law alleged and to correct any errors of law in the decision and the parameters and guidelines.

¹ Government Code section 6252.

² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

³ *County of Fresno, supra*, 53 Cal.3d at p. 487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

STAFF ANALYSIS

Background

This is a request for reconsideration made pursuant to Government Code section 17559 and section 1188.4 of the Commission on State Mandates' (CSM) regulations. The California Special Districts Association (CSDA) requests reconsideration of the statement of decision and parameters and guidelines for the *California Public Records Act* (CPRA) program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as "any city, county, and city and county, or any school district as defined in Government Code section 17519," but omits special districts required to comply with the CPRA.

Government Code section 17559(a) grants the Commission the authority to reconsider a prior final decision to correct an error of law as follows:

The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire 30 days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of the 30-day period, the commission may grant a stay of that expiration for no more than 30 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

Section 17559 refers to the reconsideration of test claim and incorrect reduction claim decisions, and does not specifically address decisions on other matters. However, parameters and guidelines are part of the test claim process, contain findings of law, and are adopted under the Commission's article 7 quasi-judicial hearing regulations. Thus, the authority to reconsider a prior decision to correct an error of law extends to a decision on parameters and guidelines.

The process provides that any interested party, affected state agency or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law.⁴ The request has to be filed within 30 days after the decision is mailed. Before the Commission considers a request for reconsideration, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted.⁵ Five affirmative votes are required to grant the request for reconsideration and schedule the matter for a hearing on the merits.⁶

If the Commission grants the request for reconsideration, a subsequent hearing on the merits is conducted to determine if the prior final decision is contrary to law and to correct an error of

⁴ California Code of Regulations, title 2, section 1188.4 (a) and (b).

⁵ California Code of Regulations, title 2, section 1188.4(f).

⁶ *Ibid.*

law.⁷ A draft staff analysis is prepared by staff and issued 8 weeks before the date that the matter is set for hearing for a 3-week comment period. Five affirmative votes are required to change a prior final decision.⁸ If no action is taken by the Commission on the request for reconsideration within the time allowed for ordering reconsideration, the petition for reconsideration “shall be deemed denied.”⁹

Request for Reconsideration

CSDA filed this request on May 2, 2013 and contends that the Commission’s decision and parameters and guidelines contain an error of law by omitting special districts from the definition of eligible claimants for this program. CSDA states the following:

The Parameters and Guidelines for the CPRA . . . provides that “Any city, county, and city and county, or any ‘school district’ as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.” It appears that the term “local agencies” was replaced by “Any city, county, and city and county” for eligible claimants. This language is inconsistent with the eligible claimants identified in the following documents, in which all eligible claimants and affected entities are repeatedly identified as “local agencies”:

- Test Claim filed by the County of Los Angeles (October 2002)
- “Adopted Statement of Decision [on the test claim] (May 26, 2011)
- County of Los Angeles “Proposed Parameters and Guidelines” (June 23, 2011)
- County of Los Angeles “Revised Parameters and Guidelines” (August 30, 2011)

Government Code section 17518 defines “Local agency” to mean any city, county, special district, authority, or other political subdivision of the state. Thus, special districts have been incorrectly removed as eligible claimants. Therefore, we respectfully request that the Commission reconsiders [sic] this omission as allowed under Title 2, California Code of Regulations Section 1188.4 and includes [sic] special districts as eligible claimants to ensure they may continue to seek reimbursement for their adherence to the CPRA mandates.

Discussion

Issue: Staff recommends that the Commission grant CSDA’s request for reconsideration.

For purposes of this hearing, the sole issue before the Commission is whether the Commission should grant the request for reconsideration and set the matter for a second hearing. For the reasons below, staff recommends that the Commission grant CSDA’s request for reconsideration to address the issue of special districts as eligible claimants.

⁷ California Code of Regulations, title 2, section 1188.4(g).

⁸ California Code of Regulations, title 2, section 1188.4(g)(2).

⁹ California Code of Regulations, title 2, section 1188.4(a).

CSDA correctly asserts that the test claim filed by County of Los Angeles on the CPRA program was filed as a class action request for reimbursement on behalf of all “local agencies” eligible to claim reimbursement,¹⁰ and that the statement of decision on the test claim for CPRA acknowledges that “local agencies” are required to comply with mandated activities.¹¹ Except for certain provisions relating only to school districts, the activities mandated by the CPRA, by definition, apply equally to all levels of government, including special districts. Government Code section 6252, a statute within the CPRA, defines “local agency” to include “a county; city, whether general law or chartered; city and county; school district; municipal corporation; *district*; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.”

CSDA is also correct that the decision on the parameters and guidelines did not address the issue of eligible claimants, but was primarily focused on the scope of reimbursable activities. The draft staff analysis and proposed statement of decision and parameters and guidelines identified eligible claimants as counties, cities, and school districts as defined, but did not include special districts or the more general phrase “local agency as defined in Government Code section 17518,” which includes special districts. No comments on the draft analysis for that issue were received. The final proposed decision did not address the issue of special districts as eligible claimants for this program, and kept the same language as the draft analysis identifying eligible claimants as counties, cities, and school districts as defined. The issue was not identified until CSDA filed its request for reconsideration on May 2, 2013.

The identification of eligible claimants in the decision and the parameters and guidelines cannot be corrected by staff as a “clerical error” under section 1188.2 of the regulations because the issue will require further legal analysis. The CPRA definition of “local agency” very broadly includes all local public agencies, whether or not they are eligible to claim reimbursement under article XIII B, section 6. Government Code section 17518 defines “local agency” for purposes of mandate reimbursement to mean “any city, county, *special district*, authority, or other political subdivision of the state.” The courts have made clear, however, that despite the broad definition of “local agency” in section 17518, reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.¹² Article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or

¹⁰ Government Code section 17521 defines “test claim” to mean the “first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state . . .”

¹¹ Statement of Decision on test claim for CPRA, page 10.

¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

assessments.¹³ There are many special districts that receive their revenue solely from fees, or receive some of their funding through fees that can be applied to this program. Thus, not all special districts are eligible to claim reimbursement under article XIII B, section 6 and some eligible districts may also have fee authority that applies to this program.

Therefore, the only way to properly address the issue and to correct the identification of eligible claimants is through this request for reconsideration.

Conclusion

Staff recommends that the Commission grant the CSDA's request for reconsideration and direct staff to schedule a second hearing on the merits of the request to determine if the statement of decision on the parameters and guidelines adopted April 19, 2013, contains the error of law alleged and to correct any errors of law in the decision and the parameters and guidelines.

¹³ *County of Fresno, supra*, 53 Cal.3d at p. 487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.