ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2005 – January 31, 2006

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562

TABLE OF CONTENTS

INTRODUCTION

The Commission on State Mandates (Commission) is required to report to the Legislature on January 15 of each year on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.[1]

This report includes five Statements of Decision adopted by the Commission during the period from January 1, 2005, through December 31, 2005 and one Statement of Decision adopted by the Commission on January 26, 2006.[2]

This report includes summaries and complete text of the Commission's decisions. Each decision is based on the administrative record of the claim and includes findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1188.2.

[1] Government Code section 17601.

[2] Statutes 2005, Chapter 677 (SB 512, eff. Oct. 7, 2005).

SUMMARY OF DENIED CLAIMS

Regional Housing Needs Determination, 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04

Statutes 2004, chapter 227 (SB 1102) directed the Commission to reconsider the Board of Control's 1981 final decision and, if necessary, revise the parameters and guidelines of the *Regional Housing Needs* program, "in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted." The Board of Control determined that Statutes 1980, chapter 1143 imposed a reimbursable mandate on cities and counties for activities related to housing elements that they are required to adopt as part of their general plans. The Board of Control adopted parameters and guidelines in 1982 to reimburse specified activities.

On reconsideration, the Commission determined that the test claim legislation is not reimbursable because cities and counties have fee authority for this program. Thus, the test claim was denied and the parameters and guidelines were set aside, effective July 1, 2004.

Regional Housing Needs Determination: Councils of Government (COGs) 04-RL-3929-05

Statutes 2004, chapter 227 (SB 1102) also directed the Commission to reconsider the Board of Control's 1981 final decision and, if necessary, revise the parameters and guidelines of the *Regional Housing Needs Determination* program, "in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted." The Board of Control determined that Statutes 1980, chapter 1143 imposes a reimbursable mandate on councils of governments for the regional housing needs assessments that they perform for cities and counties within their regions. The Board of Control adopted parameters and guidelines in 1981 to reimburse specified activities.

On reconsideration, the Commission determined that the test claim legislation is not reimbursable because (1) COGs are not eligible claimants for purposes of mandate reimbursement; and (2) because COGs have fee authority for this program. Thus, the test claim was denied and the parameters and guidelines were set aside, effective July 1, 2004.

School Bus Safety II (Court Remand) 97-TC-22

In the case of *State of California Department of Finance v. Commission on State Mandates,* (02CS00994), the Sacramento County Superior Court ordered the Commission to set aside its prior Statement of Decision and to vacate the parameters and guidelines and statewide cost estimate for the *School Bus Safety II* program, and remanded one issue back to the Commission. On remand, the issue was whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students, and if so, whether the *School Bus Safety II* program mandates a higher level of service or new program beyond federal requirements for which there are state-reimbursable costs.

On remand, the Commission determined that although federal law may require school districts to provide bus transportation for disabled students in certain circumstances, state law does not require school districts to provide a school bus transportation program.

School Accountability Report Cards, 04-RL-9721-11

First Reconsideration

Statutes 2004, chapter 895, section 18 (AB 2855), directed the Commission to reconsider the prior final decision in *School Accountability Report Cards.* When Proposition 98 was enacted, the voters also required districts to issue an annual *School Accountability Report Card*. The test claim was filed on six statutory amendments to the Proposition 98 requirements for a *School Accountability Report Card.* AB 2855 directed reconsideration of five of six statutes addressed in the prior final decision.

On reconsideration, the Commission found that by requiring several new data elements, and a new method for publicizing and distributing the existing School Accountability Report Card, the state had not shifted "the burdens of state government" to districts when "the directive can be complied with by a minimal reallocation of resources."[3] The Commission also concluded that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a *School Accountability Report Card.*

Therefore, the Commission denied reimbursement for the five statutes subject to reconsideration.

Second Reconsideration

Statutes 2005, chapter 677 (SB 512) amended AB 2855, directing the Commission to reconsider the 1997 statute missing from the first reconsideration) by January 31, 2006, and to set January 1, 2005 as the reimbursement period for the reconsiderations.

On reconsideration, the Commission applied the same analysis described above and found that the 1997 amendments imposed "duties that are necessary to implement" or are "reasonably within the scope of," "a ballot measure approved by the voters in a statewide or local election." Thus, the Commission denied reimbursement for the sixth statute subject to reconsideration.

Based on SB 512, both reconsideration decisions are retroactive to January 1, 2005 and in a related action, the Commission set aside the parameters and guidelines for this program, effective January 1, 2005.

Extended Commitment – Youth Authority, 04-RL-9813-07

Statutes 2004, chapter 316 (AB 2851) directed the Commission to reconsider one of two statutes addressed in its prior Statement of Decision on the *Extended Commitment – Youth Authority* program. Under this program, if the Youthful Offender Parole Board (YOPB) determines that the discharge of a person from control of the Youth Authority would be physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, the YOPB requests the local prosecuting attorney to petition the court to extend the commitment of

[3] *County of Los Angeles v. Commission on State Mandates, supra*, 110 Cal.App.4th at pages 1193-1194.

the person. Counties are required to participate in this process by reviewing the YOPB's request and written statement of facts, preparing and filing the requested petitions for extended commitment, representing the state in preliminary hearings and civil trials on the petitions, and retaining necessary experts, investigators, and professionals to assist in the preliminary hearings and civil trials.

On reconsideration, the Commission found that the 1998 amendments clarified the standard of proof for the preliminary hearing and made no meaningful difference in a statutory scheme that provides a jury trial upon request before the State can hold the individual beyond the normal statutory time limits for youth offenders.

Therefore, the Commission denied reimbursement based on its reconsideration of the 1998 statutes and also determined that it did not have the authority to reconsider Statutes 1984, chapter 546.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON: Statutes 1980, Chapter 1143 Claim Nos. 3759, 3760 and 3916. Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102), Effective August 16, 2004.	Nos. 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04 *Regional Housing Needs Determination* 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 March 30, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 30, 2005. Betsy Strauss appeared for the League of California Cities. Leonard Kaye appeared for the County of Los Angeles. Annette Chinn appeared for Cost Recovery Systems. Susan Geanacou appeared for the Department of Finance.

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 at the hearing by a vote of 3-0, with one abstention.

BACKGROUND

Statutes 2004, chapter 227 (Sen. Bill No. 1102, effective Aug. 16, 2004) directs the Commission to reconsider the Board of Control's final decision and parameters and guidelines on the *Regional Housing Needs* program. Sections 109 and 110 of the bill state the following:

> Notwithstanding any other provision of law, the Commission on State Mandates shall reconsider former State Board of Control decisions 3916, 3759, 3760, and 3929 regarding the regional housing needs mandate enacted by Chapter 1143 of the Statutes of 1980 to determine whether the statute is a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted, including the existence of fee authority pursuant to Section 65584.1[4] of the Government Code. The

[4] Government Code section 65584.1 (added by Stats. 2004, ch. 227) reads:

commission, if necessary, shall revise its parameters and guidelines to be consistent with this reconsideration.

Any changes by the commission shall be deemed effective July 1, 2004.

The Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions to be consistent with this act.

Board of Control Decision

The Board of Control determined that Statutes 1980, chapter 1143 imposes a reimbursable mandate for claims 3759 (County of Los Angeles), 3760 (City and County of San Francisco) and 3916 (City of El Monte) in 1981. The test claim legislation enacted content requirements for housing elements that cities and counties are required to adopt as part of their general plans.[5] For example, section 65583[6] of the test claim legislation requires the housing element to contain an assessment of housing needs and inventory of resources and constraints relevant to meeting those needs, including detailed content as specified.[7] The housing element is also required to include "A statement of the community's goals, quantified objectives, and policies relative to the maintenance, improvement, and development of housing."[8] The test claim statute also requires the housing element to contain:

> A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives,

---

> Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Section 65584. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

Although not expressly listed in Senate Bill No. 1102, section 65104 also falls within the class of fee statutes that are analyzed herein because the Legislature used the word "including."

[5] Government Code section 65350.

[6] All statutory references are to the Government Code unless otherwise indicated.

[7] Government Code section 65583, subdivision (a).

[8] Former Government Code section 65584, subdivision (b). This was later amended to add "preservation."

> and the utilizations of appropriate federal and state financing and subsidy programs when available.[9]

The content of the program in the housing element is also outlined in detail. The test claim statute defines the locality's share of the regional housing need, and requires the Department of Housing and Community Development (HCD) or the applicable council of government (COG) to determine that share.[10] And cities and counties are required by the test claim statute to submit their housing elements to the HCD.[11]

Although the requirement that the general plan include a housing element dates to 1967 (Stats. 1967, ch. 1658), the housing element had no detailed content requirements until the Legislature enacted the test claim statute in 1980. Also, the HCD had enacted regulations or guidelines for housing elements,[12] but these were not mandatory for cities or counties.[13]

The Board of Control adopted parameters and guidelines for the test claim statute in March 1982. As stated in the parameters and guidelines:

> At its December 16, 1981 and January 20, 1982 meetings, the Board considered the proposed Parameters and Guidelines under Chapter 1143/80. Considerable controversy centered around the basis for measuring the "increased level of service." A majority of the Board then directed Board staff to use the 1971 Housing Element Gudielines [sic] adopted by the Department of Housing and Community Development as a basis for determining the pre-SB 90 service level requirements. Consequently, those requirements in Chapter 1143/80 that exceeded the 1971 Housing Element Guideline were identified as reimbursable increases in service levels.

Under the heading "Reimbursable Costs," the parameters and guidelines state:

> AB 2853 made numerous changes in the housing law, which, the Board concluded, resulted in an "increased level of service." In order to determine what requirements constitute an "increased level of service," the Board ruled that the 1971 Housing Element Guidelines issued by the State Department of Housing and Community Development represented the standard of compliance to be used by local governments in preparing the housing element of their respective general plans prior to AB 2853.
>
> Consequently, reimbursable costs is the "additional costs" as a result of an "increased level of service" found in AB 2853 when compared to the 1971

---

[9] Former Government Code section 65584, subdivision (c). The current provision also includes this language.

[10] Government Code section 65584.

[11] Government Code section 65585, subdivision (b).

[12] The housing element guidelines were repealed in 1982. See California Code of Regulations, title 24, chapter 6, subchapters 3 and 4.

[13] Government Code section 65585, subdivision (a); *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986, 997; *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 885-886.

Guidelines. Costs associated with the following activities under Title 7, Div. 1, Ch. 3, Art. 10.6, of the Government Code, are reimbursable:

A. documentation of the relationship of zoning and public facitities [sic] and services to land suitable for residential development - Section 65583 (a) (3). This activity shall only be reimbursed if it was not documented in the claimant's plan developed pursuant to the 1971 Housing Element Guidelines;
B. collection and tabulation of employment data, and the analysis and documentation of employment trend including its consideration in the housing need projections - Section 65583 (a) (1);
C. review of the allocation data provided by the Council of Governments or the Department of Housing and Community Development regarding the locality's share of regional housing need and, if necessary, revision to the claimant's housing elements as a result of the allocation data.
D. collection and tabulation of data regarding the handicapped and farmworkers, and the analysis and documentation of their housing needs - Section 65583 (a) (6);
E. collection and tabulation of data regarding energy conservation and the analysis and documentation of opportunities for energy conservation with respect to residential development - Section 65583 (a) (7); and,
F. one-time costs for the documentation of the public participation process - Section 65583 (b) (5).

- Limitation: Reimbursable costs for the above activities will be limited (1) to the conformance requirement pursuant to Section 65587 and (2) as a result of an evaluation pursuant to Section 65588.

State Agency Position

The Department of Finance (DOF), in comments received December 1, 2004, does not dispute a new program or higher level of service for the test claim statute, but contends there are not costs mandated by the state pursuant to section 17514. According to DOF: (1) Statutes 2004, chapter 227 (Sen. Bill No. 1102) makes optional, at local discretion, the "analysis of opportunities for energy conservation with respect to residential development."[14] (2) Section 65584.2 states that the local government may, but is not required to, conduct a review or appeal regarding allocation data provided by HCD or the COG pertaining to the locality's share of regional housing need.

Thus, DOF argues these activities should not be reimbursable. Also, section 65584 states that distribution of regional housing needs be based on available data, negating the need for local governments to undertake studies or acquire or generate additional data. DOF also argues that cities and counties have fee authority pursuant to section 65584.1, thereby precluding state reimbursement.

No other state agency submitted comments on this reconsideration.

[14] Although Statutes 2004, chapter 227 (eff. Aug. 16, 2004) made this optional, Statutes 2004, chapter 724 (Assem. Bill No. 2348, eff. Jan. 1, 2005) deleted the amendment making it optional.

Interested Party Positions

Senator Ducheny: In comments received November 19, 2004, Senator Ducheny states that the test claim statute "probably does impose a higher level of service on local government" than under the prior housing element law, but contends that the parameters and guidelines allow for reimbursement for activities that are not mandated. The Senator argues that local governments are not required, by section 65584 nor the new 2004 regional housing needs standards of Assembly Bill No. 2158, to review the allocation data provided by a council of governments or HCD regarding the locality's share of regional housing need. Rather, local governments have the option to review and appeal their allocation, as evidenced by the enactment of section 65584.2 which states "A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of government pertaining to the locality's share of regional housing need or the submittal of data or information for a proposed allocation ... ." The Senator also argues that local governments have fee authority pursuant to section 65104, referring to the "fees to support the work of the planning agency."

League of California Cities: The League of California Cities (LCC), in comments received December 1, 2004, argues that Statutes 1980, chapter 1183 has not changed and continues to impose a new program or higher level of service on cities and counties, and disagrees with Senator Ducheny that the original parameters and guidelines were in error. LCC states that local governments have been allowed to seek reimbursement for review of the allocation data provided by COGs or HCD regarding the share of regional housing needs to determine whether the data is a fair reflection of its share of the region's housing needs. Although LCC admits the statute does not require it, it contends that the review or appeal is part of the process for the locality receiving its fair share of the regional housing needs. According to LCC, "A local government's fair share of regional housing needs is the foundation of the housing element. Preparation of the housing element is a mandate imposed by the statute. Review of regional fair share numbers is an essential step in the preparation of the housing element and, therefore, a reimbursable activity."

As to fee authority of section 65104 on developers (fees to support the work of the planning agency) discussed by Senator Ducheny, LCC argues that it may not be "sufficient to pay for the mandated program or increased level of service" (Gov. Code, § 17556, subd. (d)). Fees pursuant to section 65104 may not exceed the reasonable cost of providing the service. A city spending $100,000 on the housing element, for example, may be unable to determine the reasonable cost of providing the housing element service to the developer. LCC notes that a fee that exceeds the reasonable cost of providing the service is a tax that requires voter approval (Gov. Code, § 50076's definition of special tax). Finally, LCC notes that developer fees increase the cost of housing, arguing that it is "highly ironic for the state to encourage a city … or county to impose a fee on a housing developer to pay for the preparation of a housing element which has, as its objective, providing for the local government's fair share of the regional housing need for all income levels."

California State Association of Counties: The California State Association of Counties, in a December 12, 2004 letter, states that it concurs with the LCC comments.

California Building Industry Association: The CBIA, in comments received December 30, 2004, submits that section 65584.1 (COG fee authority) should not be given weight by the Commission in conducting its review. CBIA asserts that section 65584.1 "not

serve as a new argument in support of any attempt to foist these state-mandated costs, which are ostensibly for the benefit of State and regional communities as a whole, onto that fraction of the community which may be involved in building and buying new homes." CBIA argues that allowing costs of state-mandated regional planning to promote housing to be passed onto cities and counties, and from there to homebuilders, would further exacerbate the difficulties of providing affordable housing. CBIA states that fees and exactions on residential development help drive up the cost of housing in California, and cited a HCD study that noted problems with residential development fees. CBIA argues that section 65584.1 does not provide authority for COGs to pass on their state-mandated costs to homebuilders or homebuyers by way of city or county fees. According to CBIA, COGs that use section 65584.1 would impair or interfere with their joint powers agreements in violation of article I, section 9 (the contracts clause) of the California constitution. CBIA also argues that even if a COG implemented this new fee authority, the statute provides no guidance on how it could be lawfully implemented, which would be magnified if cities or counties attempted to pass on their costs to developers.

CBIA asserts that the fee statute does not provide a valid basis for cities and counties to pass through costs they may incur for the support of the housing needs work performed by the COGs, and would not provide a basis for a valid fee for several reasons. First, there is no basis for seeking reimbursement of costs incurred by other agencies. City/County fee authority is limited to the reasonable costs imposed on the city or county. There is no authority "to impose fees on private property owners or developers to 'reimburse' costs incurred by others." Second, article XIII D prohibits imposing a fee for general governmental services (art. XIII D, § 6, subd. (b)(5)). The fee prohibition applies to services available to the public at large in substantially the same manner as property owners. Because the service provided by COGs in distributing regional housing needs is available to the community on an equal basis, and "regional housing is a matter of statewide concern," charging a fee for it is constitutionally prohibited. Also prohibited is a fee on property owners unless the service is actually used by, or immediately available to them (art. XIII D, § 6, subd. (b)(4)). The fee cannot be based on potential or future use of a service. Thus, any city/county fee for housing elements would actually be a tax requiring voter approval. Third, the fee authorized by section 65584.1 would not meet the criteria for the two types of fees recognized by the California Supreme Court: development and regulatory fees. A development fee is defined "for the purpose of defraying all or a portion of the cost of public facilities related to the development project." (Gov. Code, § 66000, subd. (b)). The planning costs in section 65584.1's fee do not defray costs of public facilities, nor do they defray impacts caused by particular development projects, as required by law, and therefore do not constitute a lawful development fee. Since housing element activities are incurred independent of any particular development project, regardless of the level of development, and even in its absence, development fees imposed for housing element activities would be unlawful. Regulatory fees, according to CBIA, would also not apply to this case because they cannot exceed the reasonable cost of providing the service or regulatory activity for which they are charged, and they cannot be levied for general revenue purposes. If revenue is the primary purpose of the regulatory fee, and regulation is merely incidental, the fee would actually be a tax. CBIA argues that there is no regulatory function for this fee, as COGs have no role regulating individual housing development projects. Rather, the intent is to raise revenue to free the state from reimbursing the state-mandated program. Finally, CBIA argues that there is no nexus between new residential development projects and the COG's costs incurred in helping develop the housing element. Conditions on development not related to the use of the property,

but to shift the burden of providing the costs of a public benefit to another not responsible or only remotely or speculatively benefiting from it, is an unreasonable exercise of the police power, according to case law cited by CBIA. It also asserts that there must be a reasonable nexus between development activity and exactions imposed as a condition of that activity.

Southern California Association of Governments: The Southern California Association of Governments (SCAG), in comments on the draft staff analysis submitted jointly with other COGs, argues that the regional housing needs assessment is in the state's interest, and not the cities or counties interest. SCAG concludes, "it would be contrary to the policies underlying SB 90 to force local agencies to shoulder the costs of this state service."[15]

SCAG also argues that even if COGs have the authority to charge their members fees to perform regional housing needs assessments, member cities and counties cannot pass their fees on to developers. Cities and counties have fee authority to offset costs of their own planning agencies (section 65104) but do not have authority to levy fees to offset costs incurred by COGs. This argument is addressed below.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[16] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[17] "Its 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."[18] 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.[19]

---

[15] The Commission is no longer governed by SB 90. The Commission is governed by article XIII B, section 6 of the California Constitution, and Government Code section 17500, et seq.

[16] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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."

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

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

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

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.[20]

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.[21] 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.[22] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[23]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[24]

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.[25] 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."[26]

I. What is the scope of the Commission's jurisdiction directed by Senate Bill 1102?

Statutes 2004, chapter 227, sections 109-110 (Sen. Bill No. 1102, eff. Aug. 16, 2004), requires the Commission on State Mandates, "notwithstanding any other provision of law" to "reconsider former State Board of Control decisions 3916, 3759, 3760, and 3929 regarding the regional housing needs mandate enacted by Chapter 1143 of the Statutes of 1980 to determine whether

---

[20] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

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

[24] *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.

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

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

the statute is a reimbursable mandate under Section 6 of Article XIII B of the California Constitution … ."[27]

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[28]

The Commission was created by the Legislature (Gov. Code, §§ 17500 et seq.) and its powers are limited to those authorized by statute. Section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Section 17521 defines the test claim as "the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state."

Thus, the statutory scheme gives the Commission jurisdiction only over those statutes and/or executive orders pled by the claimant in the test claim. The Commission does not have the authority to approve a claim for reimbursement on statutes or executive orders that have not been pled by the claimant. For this reason, this analysis does not apply to amendments to the test claim statutes subsequent to Statutes 1980, chapter 1143.[29]

Furthermore, section 17559 grants the Commission the authority to reconsider prior final decisions only within 30 days after the statement of decision is issued. But in the present case, the Commission's jurisdiction is based solely on Senate Bill No. 1102. Absent Senate Bill No. 1102, the Commission would have no jurisdiction to reconsider any of its decisions relating to housing element provisions in the Government Code since the decision on those statutes was adopted and issued years ago.

Thus, the Commission must act within the jurisdiction granted by Senate Bill No. 1102, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[30] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Senate Bill No. 1102.

The parameters and guidelines for the *Regional Housing Needs* program were originally adopted in 1982, with a reimbursement period beginning January 1, 1981. Senate Bill 1102 (Stats. 2004,

---

[27] Statutes 2004, chapter 227, section 109.

[28] See *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[29] Section 65583 has been amended by Statutes 1984, chapter 1691, Statutes 1986, chapter 1383, Statutes 1989, chapters 1140 and 1451, Statutes 1991, chapters 730 and 889, Statutes 1992, chapter 1030, Statutes 1999, chapter 967, Statutes 2001, chapter 671, Statutes 2002, chapter 971, Statutes 2004, chapters 227 and 724. Section 65584 has been amended by Statutes 1984, chapter 1684, Statutes 1989, chapter 1451, Statutes 1990, Chapter 1441, Statutes 1998, chapter 796, Statutes 2001, chapter 159, Statutes 2003, chapter 760, and Statutes 2004, chapter 696. The 2004 statute repealed and replaced section 65584.

[30] *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

ch. 227) directs the Commission to reconsider Board of Control test claims relating regional housing. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004."

Therefore, based on the plain language of Senate Bill 1102 (Stats. 2004, ch. 227, § 109), the Commission finds that the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004.

II. Does the test claim legislation impose "costs mandated by the state" on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and section 17556?

Because the Commission finds that the fee authority of cities and counties is dispositive of the issues in this reconsideration, there is no need to discuss whether the test claim statute constitutes a program within the meaning of article XIII B, section 6, or whether it is a new program or higher level of service.

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the test claim legislation must impose costs mandated by the state within the meaning of Government Code section 17514.[31] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Section 17556 (as amended by Stats. 2004, ch. 895, Assem. Bill No. 2855) provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the

[31] See also *Lucia Mar, supra*, 44 Cal.3d 830, 835.

federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) 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.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

In this case, there are two statutes that authorize local agencies to charge fees to cover their costs. The first is section 65104 (added by Stats. 1984, ch. 690), which states:

> The legislative body shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the legislative body, including that of a charter city, *establishes any fees to support the work of the planning agency*, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The legislative body shall impose the fees pursuant to Section 66016. [Emphasis added.]

Section 66016 (cited in section 65104) requires that fees be imposed only after the local agency holds at least one open public meeting, with specified notice requirements. This section also states, in pertinent part:

> Unless there has been voter approval, as prescribed by Section 66013 or 66014, *no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied.* If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess. [Emphasis added.]

The other fee statute for this program is section 65584.1 (Stats. 2004, ch. 227), which reads:

> Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Section 65584. *A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs.* The legislative body of the city, county, or city and county shall impose the fee pursuant to

> Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee. [Emphasis added.]

The issue, therefore, is whether cities and counties have the authority in subdivision (d) of section 17556, "to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Senator Ducheny asserts that local governments have fee authority based on section 65104 (fee authority of planning agencies). She states that many local governments have used this authority to charge long-range planning fees, including fees for the development of a housing element.

LCC argues that the fee authority of section 65104 may not be sufficient to pay for the mandated program. Both sections 65104 and 66016 prohibit the fee from exceeding the cost of providing the service. Section 17556, subdivision (d) requires the fee to be sufficient to pay for the cost of the new program or higher level of service. LCC asserts, "A city that spends $100,000 to develop and adopt a housing element may be unable to determine what portion of the total amount is the 'reasonable cost' or 'estimated amount' of providing the service to the developer who will pay the fee. Should a developer that proposes to build 500 homes pay a higher fee than a developer who proposes to build 100 homes? Should a developer that proposes to build apartments pay a higher fee than the developer that proposes to build single-family homes? Will a fee be 'sufficient' to pay for the preparation of a housing element if the costs are recovered over a seven-year period? [two years to prepare the housing element plus the five-year housing element cycle]. A fee that exceeds the reasonable cost of providing the service is a tax which requires voter approval."

CBIA presents various arguments against imposing the fee authority in section 65584.1, which are summarized above under "interested party positions."

In comments on the draft staff analysis, SCAG and other COGs argue that even if COGs have the authority to charge their members fees to perform regional housing needs assessments, member cities and counties cannot pass their fees on to developers. According to SCAG, cities and counties have fee authority to offset costs of their own planning agencies (section 65104) but do not have authority to levy fees to offset costs incurred by COGs.

The Commission finds that the test claim legislation does not impose "costs mandated by the state" on cities and counties because sections 65584.1 and 65104 provide cities and counties with authority to levy fees sufficient to pay for the mandated program.

The fee authority of 65104 is plenary authorization to charge fees for services of the local planning agency. The only limitation is that the fee, "not exceed the reasonable cost of providing the service for which the fee is charged" (Gov. Code, § 65104). Or as similarly stated in section 66016, that it not exceed "the estimated amount required to provide the service for which the fee or service charge is levied."

The 65584.1 fee authority applies to reimbursement "for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs." Therefore, because it is authority limited to reimburse cities and counties for the costs of the COGs, but not the costs of the cities and counties themselves, the Commission does not consider section 65584.1's fee authority in this analysis except in response to SCAG's comments.

SCAG argues that cities and counties do not have authority to levy fees to offset costs incurred by COGs. The Commission disagrees. Section 65584.1 provides this authority to cities and counties. It reads, in part:

> A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs.

Thus, section 65584.1 grants authority to cities and counties to levy fees to offset costs incurred by COGs. And section 65104 grants authority to cities and counties to levy fees to offset their own planning agency costs. Therefore, together these statutes provide sufficient authority to cover all the activities identified in the parameters and guidelines for this program.

In *Connell v. Superior Court of Sacramento County*,[32] the court considered whether regulations that increased the purity of recycled water resulted in a reimbursable mandate. The *Connell* court found the fee authority is a question of law, so the evidence submitted regarding the fee's economic feasibility or sufficiency was not relevant.[33] The water districts' possession of the fee authority was dispositive of the question of the existence of a reimbursable mandate. The court rejected the districts' arguments that the fee would not be "sufficient to pay for the mandated costs" because it is unfeasible or economically undesirable for the districts to recover their costs.[34] As the *Connell* court stated:

> On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. … [¶] … [¶] We agree with appellants."[35]

The *Connell* court first explained the purpose of subvention. As the California Supreme Court stated regarding article XIII B, section 6 of the California Constitution, "Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues."[36] In upholding the constitutionality of the fee authority provision in section 17556, the Supreme Court stated that it "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound."[37]

The *Connell* court went on to interpret the plain meaning of "fee authority" in section 17556, subdivision (d), as the "right to exercise powers," or the "power or right to give commands [or]

---

[32] *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382.

[33] *Id.* at page 400.

[34] *Id.* at page 399.

[35] *Id.* at page 400.

[36] *Id.* at page 398, citing *County of Fresno v. State of California, supra,* 53 Cal.3d 482, 487.

[37] *Ibid.*

take action …."[38] The court rejected interpreting the statute to mean "a practical ability in light of surrounding economic circumstances," stating that if that had been the legislative intent, the Legislature would have used the term "reasonable ability" in the statute rather than "authority."[39]

The *Connell* court also considered an argument that "fees levied by the districts 'cannot exceed the cost to the local agency to provide such service,' because such excessive fees would constitute a special tax."[40] The court stated that no one is suggesting the districts levy fees that exceed their costs.

The Commission finds the reasoning of the *Connell* case applies to this test claim reconsideration. Section 65104 states in part: "If the legislative body, including that of a charter city, establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged." This statute grants fee authority to cities and counties to support the work of their planning agencies. It is the planning agency that is responsible for the general plan,[41] of which the housing element is a part.[42] There is no limitation on the fee, except that it not exceed the reasonable cost of providing the service.

In view of *Connell,* the Commission does not find convincing LCC or CBIA's arguments regarding the fee's sufficiency or the difficulty of deciding the basis for it. These arguments are not relevant to the legal inquiry because the sole consideration is whether cities or counties have fee authority.[43] Since section 65104 provides this authority to cities and counties, section 17556, subdivision (d) precludes the Commission from finding a state mandate for developing or adopting the housing element.

CONCLUSION

The Commission finds that the test claim legislation (Stats. 1980, ch. 1143) does not impose "costs mandated by the state" on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and section 17556, subdivision (d) because the cities and counties have fee authority statutes to cover the cost of the *Regional Housing Needs* program.

---

[38] *Id. at page* 401.

[39] *Id.* at pages 400-401.

[40] *Id.* at page 402.

[41] Government Code section 65300.

[42] Government Code section 65302, subdivision (c).

[43] *Connell v. Superior Court of Sacramento County, supra,* 59 Cal.App.4th 382, 400.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR BOARD OF CONTROL DECISION ON: Statutes 1980, Chapter 1143 Claim No. 3929. Directed by Statutes 2004, Chapter 227, Sections 109-110 (Sen. Bill No. 1102), Effective August 16, 2004.	No. 04-RL-3929-05 *Regional Housing Needs Determination: Councils of Governments* 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 March 30, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 30, 2005. Scott Haggerty and Rose Jacobs Gibson appeared for the Association of Bay Area Governments. Karen Tachiki and Lynn Harris appeared for the Southern California Association of Governments. Rusty Selix appeared on behalf of the California Association of Councils of Governments. Susan Geanacou appeared for the Department of Finance.

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 at the hearing by a vote of 3-0, with one abstention.

BACKGROUND

Statutes 2004, chapter 227 (Sen. Bill No. 1102, effective Aug. 16, 2004) directs the Commission to reconsider the Board of Control's final decision and parameters and guidelines on the *Regional Housing Needs* program. Sections 109 and 110 of the bill state the following:

> Notwithstanding any other provision of law, the Commission on State Mandates shall reconsider former State Board of Control decisions 3916, 3759, 3760,[44] and 3929 regarding the regional housing needs mandate enacted by Chapter 1143 of the Statutes of 1980 to determine whether the statute is a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted, including the

[44] The reconsideration for claims 3916, 3759, and 3760 is in a separate statement of decision entitled *Regional Housing Needs Determination.*

existence of fee authority pursuant to Section 65584.1[45] of the Government Code. The commission, if necessary, shall revise its parameters and guidelines to be consistent with this reconsideration.

Any changes by the commission shall be deemed effective July 1, 2004.

The Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions to be consistent with this act.

Board of Control Decision

In 1981, the Board of Control determined that Statutes 1980, chapter 1143 imposes a reimbursable mandate for claim no. 3929 (filed by the Association of Bay Area Governments, or ABAG). The test claim legislation enacted content requirements for housing elements that cities and counties are required to adopt as part of their general plans.[46] For example, section 65583[47] of the test claim legislation requires the housing element to contain an assessment of housing needs and inventory of resources and constraints relevant to meeting those needs, including detailed content as specified.[48] The housing element is also required to include "A statement of the community's goals, quantified objectives, and policies relative to the maintenance, improvement, and development of housing."[49] A five-year program for implementation is also required, with content outlined in detail.[50]

The test claim statute defines the locality's share of the regional housing need, and requires the Department of Housing and Community Development (HCD) or the applicable council of government (COG) to determine the existing and projected housing needs for its region, and to determine each locality's share of the housing need.[51] After the COG determines the housing

---

[45] Government Code section 65584.1 (added by Stats. 2004, ch. 227) reads:

> Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Section 65584. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

[46] Government Code section 65350.

[47] All statutory references are to the Government Code unless otherwise indicated.

[48] Government Code section 65583, subdivision (a).

[49] Former Government Code section 65584, subdivision (b). This was later amended to add "preservation."

[50] Former Government Code section 65584, subdivision (c).

[51] Former Government Code section 65584, subdivision (a).

needs for each locality in its region, a county or city may revise the definition of its share based on available data. The COG is then required to accept the revision or indicate, based on available data and accepted planning methodology, why the revision is inconsistent with the regional housing need.[52]

Although the housing element requirement in the general plan dates to 1967 (Stats. 1967, ch. 1658), the housing element had no detailed content requirements until the Legislature enacted the test claim statute in 1980. Also, HCD had promulgated regulations or guidelines for housing elements,[53] but these were not mandatory for cities, counties or COGs.[54]

The Board of Control adopted parameters and guidelines for the test claim statute in October 1981. As stated in the parameters and guidelines:

> By enacting Chapter 1143, Statutes of 1980, the Legislature required that each council of government (COG) determine the existing and projected need for housing for its region, and determine each City and County share of such need, based upon these factors:
>
> -Market demand for housing
> -Employment opportunities
> -Availability of Suitable [sic] sites and public facilities
> -Commuting patterns
> -Type and tenure of housing
> -Housing needs of farmworkers
> -Desire to avoid impaction of localities with relatively high proportions of lower income households
>
> If a local government revises its share of regional housing needs determined by each COG, the COG shall accept the revision, or shall indicate, based upon available data and accepted planning methodology, why the revision is inconsistent with the regional housing need.

Under the heading "Reimbursable Costs," the parameters and guidelines specify the following activities (omitted paragraphs are those labeled "reimbursable costs"):

1. Activity: If necessary, adjust data provided by [HCD] to determine existing and projected housing needs of the region. Coordination of COG determinations of regional housing needs should take place with [HCD]. [¶]…[¶]
2. Activity: Preparation of draft plan that distributed regional housing needs to cities and counties within the geographical area of the COG, utilizing available data and the factors cited in section 65584 (a). [¶]…[¶]

---

[52] Former Government Code section 65584, subdivision (c).

[53] The housing element guidelines were repealed in 1982. See California Code of Regulations, title 24, chapter 6, subchapters 3 and 4.

[54] Government Code section 65585, subdivision (a); *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986, 997; *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 885-886.

3. Activity: Conducting of public hearings by the Board of Directors for the purpose of adopting determinations of local shares of regional housing needs. Meetings, briefing, training sessions, seminars and advisory committees are not reimbursable. [¶]…[¶]

4. Activity: Review of all local government revisions to the COG's determined shares of regional housing needs, if any, and acceptance of such revisions or indications that such revisions are inconsistent with regional housing needs within 60 days of local government's revisions. [¶]…[¶]

5. [This paragraph specifies costs incurred by specific COGs (e.g., Southern California Association of Governments, or SCAG) within stated deadlines for revisions. The parameters and guidelines also included some express limitations on reimbursement.]

State Agency Position

In comments received November 30, 2004, the Department of Finance (DOF) states that COGs are not eligible claimants under article XIII B, section 6 of the California Constitution because they have no independent power of taxation, nor do the fees they receive from cities and counties constitute "proceeds of taxes" subject to article XIII B appropriation limits. According to DOF, COGs are analogous to redevelopment agencies that were found ineligible for state reimbursement under two cases: *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal. App. 4th 976, and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266. In those cases, the redevelopment agencies were ineligible for state reimbursement because their financing was not "deemed the receipt by an agency of proceeds of taxes … within the meaning of Article XIII B of the California Constitution …." DOF states that COGs are organized pursuant to the Joint Powers Act (Gov. Code, § 6500 et seq.) and have no ability to levy taxes, and therefore, are not eligible claimants. DOF also argues that COGs have fee authority under section 65584.1, so the Commission cannot find there are costs mandated by the state. DOF asserts that funds in past budgets appropriated and paid to COGs for this program "should be considered a voluntary state subvention, not required by mandate law."

No other state agency submitted comments on this reconsideration.

Interested Party Positions

Senator Ducheny: In comments received November 19, 2004, Senator Ducheny states that given budget deficits, it is not realistic to expect ongoing General Fund appropriations for the regional housing needs determinations process. Senator Ducheny also states that *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, et al.* (1996) 43 Cal. App. 4th 1188, and *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App. 4th 976, make COGs ineligible for reimbursement. She also asserts that the Legislature provided fee authority to COGs in section 65584.1 for the activities in the test claim statute, "and for local governments in turn to pass these costs on to developers as fees." According to the Senator, this fee authority was intended to meet the requirement in section 17556, subdivision (d), concluding that while there is a mandate on COGs "to perform the distribution of the regional housing need," it is not a reimbursable mandate.

California Association of Councils of Governments: CACOG's position is that the original Board of Control decision should remain in effect without change, and the cases cited by Senator Ducheny concern redevelopment agencies and not COGs, so they do not directly decide the issue. Also, CACOG asserts that redevelopment agencies are created pursuant to specific state laws, whereas COGs are joint powers agencies with no dedicated state revenues and no taxing authority. CACOG argues that the court decisions state that redevelopment agencies are agencies of the state and not a local government, although governed by local officials, and their activities carry out a state function. COGs (except ABAG) also carry out state functions in transportation, with state funding. CACOG argues, "It would be a different issue were the Commission to be considering a responsibility that is imposed upon entities that are Councils of Governments for activities they are carrying out as a transportation planning agency or transportation commission which includes state funding." CACOG argues that there is a difference between activities a city carries out as a redevelopment agency for which it is not eligible for reimbursement, and those it carries out as a city for which it is. As to the COGs' fee authority, CACOG argues that applying it would violate the state and federal constitutional provision against impairment of contracts because the joint powers agreements between COGs and member cities/counties are contracts that contain the only terms for amendment. CACOG reiterates the League of California Cities' (LCC) position that a COG fee on a local government that is not used for a local purpose, but for a statewide purpose, is a tax and is therefore invalid.

Sacramento Area Council of Governments: In its original comments, SACOG urges the Commission to find that the regional housing needs assessments continue to be reimbursable. SACOG concurs with and incorporates CACOG's and LCC's comments. SACOG asserts that section 65584.1 does not grant legitimate fee authority and does not exempt regional housing needs assessments from reimbursement. Because COGs have only the powers enumerated in their fee agreements with member agencies, COGs have no power to levy fees because member agencies would have to amend their joint powers agreements to grant COGs this authority. SACOG's remaining arguments on COG's fee authority are summarized in the analysis below.

In comments on the draft staff analysis submitted in February 2005, SACOG disagrees with the staff recommendation. According to SACOG, the draft staff analysis did not address several of the arguments in favor of reimbursement made by the interested parties, so recommendations in the draft staff analysis should not be followed. SACOG's arguments are further summarized and addressed below.

San Diego Association of Governments: SANDAG supports the comments submitted by CACOG, and states that COGs are eligible claimants. In support, SANDAG cites the Board of Control decision and the State Controller's Mandated Cost Manual.

Southern California Association of Governments: In its comments filed in December 2004, SCAG argues that the state is required to reimburse local governments for the cost of implementing the regional planning mandate. SCAG asserts that whether COGs may actually impose the fee in section 65584.1 is an unresolved issue. According to SCAG, until the issue is resolved it is premature for the Commission to determine section 65584.1's effect on the reimbursability of the regional housing needs assessment process. SCAG also states that the COG's authority to collect fees amounts to COGs collecting from themselves. "Collecting from their [COGs'] members hardly results in any sort of reimbursement to the COGs." So COGs, according to SCAG, would be paying for the assessments themselves. SCAG asserts that this

runs counter to the SB 90[55] policy to prevent the state from shifting costs of providing public services to local agencies.

SCAG states that pursuant to section 65584, it must allocate shares of regional housing need to cities and counties in the region, and allocate shares of subregional housing need to subregional agencies that choose to accept the delegation of responsibility from SCAG. As to whether COGs are eligible claimants, SCAG submits that they are and cites the Board of Control decision and the State Controller's Mandated Cost Manual in support. SCAG asserts that since Revenue and Taxation Code section 2211 has not changed,[56] COGs are still eligible claimants. As to whether the test claim statute imposed a new program, SCAG argues that it did. Before the test claim statute, COGs were not required to determine a regional housing need, nor required to determine local shares of the need. Despite amendments to section 65584 since the test claim statute, it continues to mandate COGs to perform these activities, and is therefore still a new program. As to the new fee authority of section 65584.1, SCAG asserts that its validity is unresolved, and repeats the League of California Cities' assertion that the fee constitutes an unconstitutional local tax. SCAG also argues that such a fee to member agencies would essentially be charging themselves in violation of the principle not to shift costs for public services to local agencies. SCAG states that in light of past reimbursement by the state for this program, the new fee authority should have no bearing on state reimbursement. Finally, SCAG points out that according to the 2003-2004, and 2002-2003 state budget acts, only $1000 has been appropriated for reimbursements to local agencies for the test claim activities.

SCAG (along with ABAG, SACOG, CACOG, and SANDAG) submitted rebuttal comments on January 10, 2005, taking issue with the argument that the fee authority of section 65584.1 precludes COG reimbursement. The fee arguments are summarized below in the analysis.

In commenting on the draft staff analysis, SCAG (in comments submitted jointly with ABAG, SACOG, CACOG and SANDAG) states that the analysis fails to address the COGs' prior comments. SCAG also argues that the plain language of Government Code section 17518 does not support the interpretation that COGs are not eligible claimants under article XIII B, section 6. These arguments are addressed below.

League of California Cities: LCC argues that Statutes 1980, chapter 1183 has not changed and continues to impose a new program or higher level of service on cities and counties, and disagrees with Senator Ducheny that the original parameters and guidelines were in error.

LCC further comments that COGs are eligible claimants because article XIII B, section 6 requires reimbursement to a "local agency," meaning "any city, county, special district, authority, or other political subdivision of the state." (Gov. Code, § 17518). LCC argues that as a "joint powers authority," which is a public entity separate and distinct from the parties that created it, a COG is an "authority" within the meaning of section 17518. LCC disagrees with Senator Ducheny's reference to two cases for the proposition that a COG may not submit a claim for reimbursement. According to LCC, these cases did not hold that a COG may not submit a claim for reimbursement, but only that a redevelopment agency may not submit one. LCC also

---

[55] The Commission is currently governed by article XIII B, section 6 of the California Constitution and Government Code section 17500 et seq.

[56] *Ibid.*

makes various arguments against the fee authority of section 65584.1, as summarized below in the analysis.

Finally, LCC notes that developer fees increase the cost of housing, arguing that it is "highly ironic for the state to encourage a city … or county to impose a fee on a housing developer to pay for the preparation of a housing element which has, as its objective, providing for the local government's fair share of the regional housing need for all income levels."

California State Association of Counties: CSAC, in a December 23, 2004 letter, states that it concurs with the LCC comments.

California Building Industry Association: CBIA, in comments received December 30, 2004, submits that section 65584.1 (fee authority) should not be given weight by the Commission in conducting its review. CBIA asserts that 65584.1 "not serve as a new argument in support of any attempt to foist these state-mandated costs, which are ostensibly for the benefit of State and regional communities as a whole, onto that fraction of the community which may be involved in building and buying new homes." CBIA argues that allowing costs of state-mandated regional planning to promote housing to be passed onto cities and counties, and from there to homebuilders, would further exacerbate the difficulties of providing affordable housing. CBIA states that fees and exactions on residential development help drive up the cost of housing in California, and cited a HCD study that noted problems with residential development fees. CBIA argues that section 65584.1 does not provide authority for COGs to pass on their state-mandated costs to homebuilders or homebuyers by way of city or county fees. According to CBIA, COGs that use section 65584.1 would impair or interfere with their joint powers agreements in violation of article I, section 9 (the contracts clause) of the California Constitution. CBIA also argues that even if a COG implemented this new fee authority, the statute provides no guidance on how it could be lawfully implemented, which would be magnified should cities or counties attempt to pass on costs to developers.

CBIA presents various other arguments against the fee authority of section 65584.1, which are summarized below in the analysis.

Mendocino Council of Governments: In comments received January 20, 2005, MCOG states that it "has no interest in conducting periodic regional housing needs allocation plans for Mendocino County. … We do it only because it is required by state law. <u>It is a state mandate.</u>" [Emphasis in original.] MCOG also concurs with comments submitted by SCAG.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[57] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[58] "Its 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."[59] 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.[60]

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.[61]

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.[62] 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

---

[57] Article XIII B, section 6, subdivision (a), (amended by Proposition 1A in November 2004) 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."

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

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

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

[61] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

legislation.[63] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[64]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[65]

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.[66] 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."[67]

I. What is the scope of the Commission's jurisdiction directed by Senate Bill 1102?

Statutes 2004, chapter 227, sections 109-110 (Sen. Bill No. 1102, eff. Aug. 16, 2004), requires the Commission on State Mandates, "notwithstanding any other provision of law" to "reconsider former State Board of Control decisions 3916, 3759, 3760, and 3929 regarding the regional housing needs mandate enacted by Chapter 1143 of the Statutes of 1980 to determine whether the statute is a reimbursable mandate under Section 6 of Article XIII B of the California Constitution … ."[68]

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution.[69] An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[70]

The Commission was created by the Legislature (Gov. Code, §§ 17500 et seq.), and its powers are limited to those authorized by statute. Section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Section 17521 (as amended by Stats. 2004, ch. 890) defines a test claim as "the first claim filed

---

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

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

[65] *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.

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

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

[68] Statutes 2004, chapter 227, section 109.

[69] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[70] *Ibid.*

with the Commission alleging that a particular statute or executive order imposes costs mandated by the state."

Thus, the Government Code gives the Commission jurisdiction only over those statutes and/or executive orders pled by the claimant in the test claim. The Commission does not have the authority to approve a claim for reimbursement on statutes or executive orders that have not been pled by the claimant. For this reason, this analysis does not apply to amendments to the test claim statutes subsequent to Statutes 1980, chapter 1143.[71]

Furthermore, section 17559 grants the Commission the authority to reconsider prior final decisions only within 30 days after the statement of decision is issued. But in the present case, the Commission's jurisdiction is based solely on Senate Bill No. 1102. Absent Senate Bill No. 1102, the Commission would have no jurisdiction to reconsider any of its decisions relating to housing element provisions of the Government Code since the decisions on those statutes were adopted and issued years ago.

Thus, the Commission must act within the jurisdiction granted by Senate Bill No. 1102, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[72] Since a Commission action is void if it exceeds the powers conferred by statute, the Commission must narrowly construe the provisions of Senate Bill No. 1102.

The parameters and guidelines for the *Regional Housing Needs* program were originally adopted in 1981, with a reimbursement period beginning January 1, 1981. Senate Bill 1102 (Stats. 2004, ch. 227) directs the Commission to reconsider Board of Control regional housing test claims. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004." Therefore, based on the plain language of Senate Bill 1102 (Stats. 2004, ch. 227, § 109), the Commission finds that the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2004.

II. Are COGs eligible claimants under article XIII B, section 6 of the California Constitution?

Section 65584, as added by Statutes 1980, chapter 1143, requires each COG to determine the existing and projected housing needs for its region, and to determine each locality's share of the housing need.[73] After the COG determines the housing needs for each locality within its region, a county or city may revise the definition of its share based on available data. The COG is then required to accept the revision or indicate, based on available data and accepted planning methodology, why the revision is inconsistent with the regional housing need.[74]

As indicated above, the Board of Control determined in 1981 that section 65584 of the test claim legislation imposed a reimbursable state-mandated program under article XIII B, section 6 on

---

[71] Section 65584, the test claim statute that applies to COGs, has been amended by Statutes 1984, chapter 1684, Statutes 1989, chapter 1451, Statutes 1990, chapter 1441, Statutes 1998, chapter 796, Statutes 2001, chapter 159, Statutes 2003, chapter 760, and Statutes 2004, chapter 696. The 2004 statute repealed and replaced section 65584.

[72] *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[73] Former Government Code section 65584, subdivision (a).

[74] Former Government Code section 65584, subdivision (c).

COGs. For purposes of this reconsideration, several COGs urge the Commission to continue to find that they are eligible claimants and are entitled to reimbursement under article XIII B, section 6 for the costs listed in the parameters and guidelines to implement section 65584.[75] SANDAG argues, for example, that the Board of Control's August 1981 decision on this test claim that the test claim statute results in state-mandated costs supports its contention that COGs are eligible claimants. SANDAG also argues that the Mandated Cost Manual issued by the State Controller's Office that lists COGs as eligible claimants support SANDAG's contention as to the eligibility of COGs as claimants.

For the reasons provided below, however, the Commission finds that the Board of Control's decision is legally incorrect under current law. Since 1981, there have been 31 court decisions interpreting article XIII B, section 6. Based on the courts' interpretation of article XIII B, sections 6 and 8, the Commission finds that the "costs" incurred by COGs are not the type of costs that are state reimbursable under the Constitution. Thus, COGs are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 and Government Code section 17500 et seq.

The California Supreme Court has repeatedly held that the subvention requirement of article XIII B, section 6 must be interpreted in light of its textual and historical context.[76] Thus, before describing COGs, it is necessary to outline the history and purpose of mandate reimbursement under the California Constitution.

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A imposes a limit on the power of state and local governments to adopt and levy taxes. In 1979, the voters added article XIII B to the Constitution, which "imposes a complementary limit on the rate of growth in government spending."[77] The spending limit in article XIII B is accomplished by limiting the "total annual appropriations subject to limitation" so that "a government entity may not spend more in one year on a program funded with the proceeds of taxes than it did in the prior year."[78] Articles XIII A and XIII B work in tandem, restricting California governments' power both to levy and to spend for public purposes. Their goals are to "protect residents from excessive taxation and government spending."[79]

Article XIII B, section 6 requires, with exceptions not relevant to this issue, that 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 the local government for the costs of the new program or higher level of service. In *County of San Diego v. Commission on State Mandates,*[80] the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local

---

[75] See comments from CACOG, SACOG, SANDAG, and SCAG.

[76] *County of Fresno v. State of California* (1991) 53 Cal.3d 482,487; *County of San Diego, supra,* 15 Cal.4th 68, 81.

[77] *County of San Diego, supra,* 15 Cal.4th at page 81.

[78] *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 107.

[79] *Ibid.*

[80] *County of San Diego, supra,* 15 Cal. 4th at page 81.

agencies. The purpose of section 6 is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities *because they are subject to taxing and spending limitations under articles XIII A and XIII B.*[81] [Emphasis added.]

Thus, a local agency must be subject to the tax and spend limitations of articles XIII A and XIII B to be eligible for reimbursement of costs incurred to implement a "program" under section 6.

In the present case, COGs are joint powers agencies established pursuant to the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.). They are made up of cities and counties that voluntarily become members of the joint powers authority. Under the Act, local agencies are authorized to enter into agreements to "jointly exercise any power common to the contracting parties."[82] The entity provided to administer or execute the agreement may be one or more of the parties to the agreement; a person, firm or corporation, including a nonprofit corporation, designated in the agreement; or a public entity, commission or board.[83] A joint powers authority is a separate entity from the parties to the agreement and is not legally considered to be the same entity as its contracting parties.[84]

A joint powers agency, such as a COG in this case, has only the powers that are specified in the joint powers agreement.[85] Unlike one of their city or county members, COGs do not have the independent statutory authority to levy and to collect tax revenue. Rather, they receive funds through membership dues paid with the proceeds of taxes of their city and county members.[86]

In addition, as explained below, COGs are not subject to the spending limitation prescribed by article XIII B. Article XIII B, section 8, subdivision (b), defines "appropriations subject to limitation" for local government to mean "any authorization to expend during a fiscal year the *proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to section 6) exclusive of refunds of taxes... ." [Emphasis added.] As indicated above, COGs do not have the independent power to tax. Thus, the issue is whether their local agency members, which do have the power to tax, can levy taxes "for" the COGs, making those tax proceeds subject to the spending limitation of article XIII B.

In 1985, the Second District Court of Appeal, in *Bell Community Redevelopment Agency v. Woosley*, interpreted the phrase "taxes levied by or for an entity" in the definition of "appropriations subject to limitation" in article XIII B, section 8.[87] Although the *Bell* case

---

[81] *Ibid; See also, Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985; and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281.

[82] Government Code section 6502.

[83] Government Code sections 6506, 6508.

[84] Government Code section 6507; 65 Opinions of the California Attorney General 618, 623 (1982).

[85] Government Code section 6508.

[86] See rebuttal comments of the Councils of Governments, page 9.

[87] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24.

involved a redevelopment agency, the court's interpretation of the spending limit in article XIII B is instructive and relevant to this case.

The *Bell* court determined that the phrase "taxes levied by or for an entity" has a long-standing special meaning, dating back to an 1895 law that provided for the levy of taxes "by and for" municipal corporations. Based on the interpretation of the phrase, the court concluded that a local agency does not levy taxes for a redevelopment agency since a redevelopment agency does not have the power to tax. Thus, "costs" incurred by an entity that does not have the power to tax are not subject to the spending limit in article XIII B. The court's holding is as follows:

> This [1895] act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. [Citations omitted.] The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. [Citation omitted.] In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. [Citation omitted.]
>
> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity." *It is obvious that none of these characteristics has any applicability to the redevelopment process … The first and foremost fact which mandates this conclusion is that a redevelopment agency does not have the power to tax. [Citation omitted.] That being the case, we resolve that the county is not levying taxes "for" the Agency*. (Emphasis added.)[88]

Similarly, a county or city member of a COG does not levy taxes for the COGs because COGs do not have the power to tax. Therefore, the "costs" incurred by COGs for this program are not subject to the tax and spend limitations of articles XIII A and XIII B. Accordingly, article XIII B, section 6 does not apply to COGs.

SACOG, in comments on the draft staff analysis, argues that, "because the COGs receive their revenue from dues paid by member agencies, the COGs' activities are paid for nearly exclusively from local agency tax revenues." So SACOG asserts that without state reimbursement "local tax revenues will be used to pay for the cost of the program." The Commission finds that using the tax revenue of other local agencies is not relevant to whether COGs are independently eligible as claimants. What is relevant, as stated above, is that (1) COGs do not have power to tax; and (2) COGs are not subject to the spending limitation under article XIII B because COGs' local agency members cannot levy taxes "for" the COGs to make the tax proceeds subject to the spending limitation of article XIII B.

This conclusion is further supported by the Legislature's interpretation of article XIII B, section 6 in section 17500 et seq., which the Legislature enacted as the "sole and exclusive

[88] *Id.* at pages 32-33.

procedure by which a local agency or school district may claim reimbursement for costs mandated by the state" as required by article XIII B, section 6.[89] Thus, the definitions of eligible claimants in the Government Code are the statutes that are relevant to an analysis of eligible claimants under article XIII B, section 6, and not the definitions in the Revenue and Taxation Code as asserted by SCAG.[90]

CSAC asserts that COGs are eligible claimants based on the Legislature's definition of "local agency" in section 17518, which defines "local agency" to mean "any city, county, special district, authority, or other political subdivision of the state." SCAG, ABAG, SACOG, CACOG, and SANDAG, in comments on the draft staff analysis, argue:

> The fact that cities, counties and special districts have the power to tax, does **not** mean the "authorities" must also have this same power. A less strained and more reasonable interpretation is that the Legislature intended to include all forms of cities, counties, and special districts including "authorities" and "political subdivisions" in its definition of local agencies." Joint powers authorities like COGs consist of cities and counties, and the term "political subdivision" includes "any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries." Govt. Code § 12650 (b)(3).
>
> This interpretation is supported by the language of the statute: "[l]ocal agency' means any city, county, special district, authority, or <u>other political subdivisions</u> of the state." Govt. Code § 17518 (emphasis added). The use of the words "other political subdivision" implies that a city, county, special district, and authority each qualify as a political subdivision of the state. Indeed, this is consistent with the definition of "political subdivision."

The Commission disagrees with this interpretation of Government Code section 17518. Although the Legislature includes the word "authority" in the definition of local agency, it is not clear from the plain language of the statute what type of authority the Legislature intended to include within the definition. Since the language in section 17518 is unclear, the rules of statutory construction must be followed to determine legislative intent.

Under the rules of statutory construction, the courts will "seek to ascertain common characteristics among things of the same kind, class, or nature when they are cataloged in legislative enactments."[91] The California Supreme Court explained the rule as follows:

> The principle requires that when we interpret general statutory terms following the listing of specific classes of persons or things, we must construe the terms as applying to persons or things of the same general nature or class as those listed. The rule is based on the obvious reason that if the writer had intended the general

[89] Government Code section 17552.

[90] Senate Bill No. 1102 (Stats. 2004, ch. 227), requires the Commission to reconsider this reimbursement determination, "under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted … ."

[91] *White v. Ultramar, Inc*. (1999) 21 Cal.4th 563, 573.

> words to be used in their unrestricted sense, he or she would not have mentioned the particular things or classes of things which would in that event become mere surplusage.[92]

In the present case, the Legislature placed the word "authority" next to the words "city, county, and special district" when defining eligible claimants for purposes of reimbursement under article XIII B, section 6. Thus, under the rule of statutory construction described above, it is presumed that the Legislature intended that an "authority" would be of the same general nature or class as a city, county or special district. Cities, counties, and special districts have the power to tax[93] and are subject to the spending limitation of article XIII B and, thus, are eligible claimants under article XIII B, section 6. Joint powers authorities, such as COGs, do not have the power to tax and are not subject to the spending limitation in article XIII B. Thus, joint powers authorities are not in the same class as a city, county, or special district for purposes of reimbursement under article XIII B, section 6.

Moreover, before 2004, the Legislature, in section 17520, specifically defined a "special district" that was eligible to claim reimbursement under article XIII B, section 6 to include a joint powers agency and a redevelopment agency. In 2004, the Legislature amended section 17520 to *delete* joint power agencies and redevelopment agencies from the definition of special district.[94] It is a fundamental rule of statutory construction that "the Legislature is deemed to be aware of … judicial decisions already in existence, and to have enacted or amended a statute in light thereof."[95] In addition, it is presumed the Legislature intends to change the meaning of a law when it alters the statutory language by deleting express provisions of the statute.[96]

In the present case, two decisions by the courts of appeal were published before the Legislature amended section 17520, concluding that redevelopment agencies are not subject to article XIII B, section 6 since they are not bound by the spending limitations in article XIII B, and are not required to expend any proceeds of taxes.[97] As stated above, it is presumed that the Legislature was aware of these court decisions and deleted from the definition of "special district" the entities that were not subject to the tax and spend provisions of article XIII A and XIII B, i.e., redevelopment agencies and joint power agencies.

Thus, the deletion of joint power agencies from the definition of special districts in section 17520 supports the conclusion that the Legislature did not intend that the word "authority" in section 17518 included an authority, such as a COG, that does not have power to tax and is not subject to the spending limitations in article XIII B. A statute must be construed in the context of the entire

---

[92] *Ibid*.

[93] Revenue and Taxation Code sections 93, 95.

[94] Statutes 2004, chapter 890 (Assem. Bill No. 2856).

[95] *People v. Harrison* (1989) 48 Cal.3d 321, 329.

[96] *People v. Mendoza* (2000) 23 Cal.4th 896, 916.

[97] *Redevelopment Agency, supra*, 55 Cal.App.4th at page 986. The Third District Court of Appeal adopted the reasoning of the *Redevelopment Agency* decision in *City of El Monte, supra,* 83 Cal.App.4th at page 281.

statutory scheme of which it is a part, in order to achieve harmony among its parts. It is not appropriate to confine interpretation to the one section to be construed.[98]

As to SANDAG's argument that the Board of Control decision and State Controller's Office Mandated Cost Manual support its contention that COGs are eligible claimants, the Commission disagrees. The Commission was ordered to reconsider the Board of Control decision by Senate Bill No. 1102 (Stats. 2004, ch. 227), "in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted …." Senate Bill No. 1102 also requires the Commission to "amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions to be consistent with this act." The original Board of Control decision and State Controller's Office Mandated Cost Manual (containing the claiming instructions), therefore, are not relevant to whether COGs are eligible claimants, nor do they provide guidance on the issues. The decision and manual are the very documents the Legislature has ordered the Commission to reconsider.

Therefore, the Commission finds that the "costs" incurred by COGs are not the type of costs that are reimbursable under article XIII B, section 6. Accordingly, COGs are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 or section 17500 et seq.

Although this conclusion by itself is sufficient grounds to deny the test claim, the Commission will also discuss the COG fee authority as a separate and independent ground to deny the claim.

III. Does the test claim legislation impose "costs mandated by the state" on COGs within the meaning of article XIII B, section 6 of the California Constitution and section 17556?

The Commission finds that, in addition to the COG eligibility issue discussed above, the fee authority of COGs is dispositive of the issues in this reconsideration. Therefore, there is no need to discuss whether the test claim statute constitutes a "program" within the meaning of article XIII B, section 6, or whether it is a "new program or higher level of service."

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, two criteria must be met. First, the test claim legislation must impose costs mandated by the state.[99] Second, no statutory exceptions listed in section 17556 can apply. Section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Section 17556, (as amended by Stats. 2004, ch. 895, Assem. Bill No. 2855), provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

---

[98] *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, 1816.

[99] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) 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.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

The issue, therefore, is whether COGs, even if deemed a "local agency," have the authority in subdivision (d) of section 17556, "to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

DOF argues that COGs have fee authority under section 65584.1 and therefore, the Commission cannot find there are costs mandated by the state.

Senator Ducheny also states that the Legislature provided fee authority to COGs in section 65584.1 for the activities in the test claim statute, "and for local governments in turn to pass these costs on to developers as fees." According to the Senator, this fee authority was intended to meet the requirement in section 17556, subdivision (d).

CACOG argues that applying the fee authority would violate the state and federal constitutional provision against impairment of contracts because the joint powers agreements between COGs and member cities/counties are contracts that contain the only terms for amending them. CACOG reiterates the LCC's position that a COG fee on a local government that is not used for a local purpose, but for a statewide purpose, is actually a tax and therefore invalid.

SACOG concurs with and incorporates the CACOG's and LCC's comments, and asserts:

- Section 65584.1 does not grant legitimate fee authority and does not exempt regional housing needs assessments from reimbursement. Because COGs have only the powers enumerated in their fee agreements with member agencies, COGs have no power to levy fees because member agencies would have to amend their joint powers agreements to grant COGs this authority. The fee authority, according to SACOG, is not real authority because it cannot be exercised until the member agencies authorize it.
- Moreover, SACOG points out that if the joint powers agreements were amended to include a fee, some member agencies may withdraw from the COG, in which case the housing needs assessments would need to be conducted by the state. HCD may delegate this to the local agency if it has the resources and capability, and the local agency agrees to prepare the assessment. Under the new fee statute, COGs can only request that local agencies be subject to the new fee, and cities and counties likely do not have fee authority. According to SACOG, "Government Code section 65584.1 hinges on the hope that local agencies, and in turn, developers, will agree to pay the costs of the regional housing needs determination, despite the lack of genuine authority to levy such fees."
- In February 2005 comments on the draft staff analysis, SACOG argues that the issue is not one of the fee authority's convenience or political expediency. SACOG reiterates its argument that, "fees authorized by Government Code section 65584.1 are not legitimate fees, and that local agencies will not be able to levy these fees <u>at all.</u>" [Emphasis in original.]

SCAG's comments that:

- Whether COGs may actually impose the fee in section 65584.1 is an unresolved issue, and therefore, until it is resolved, it is premature for the Commission to determine whether 65584.1 affects reimbursability of the regional housing needs assessment process.
- The COG's authority to collect fees amounts to COGs collecting from themselves.
- Until the issue of the validity of section 65584.1's fee authority is resolved, the fee constitutes an unconstitutional local tax. SCAG restates these arguments in commenting on the draft staff analysis.

Rebuttal comments submitted by SCAG, ABAG, SACOG, CACOG and SANDAG, repeat some of SCAG's arguments, stating:

- COG fee authority amounts to COGs collecting it from themselves.
- COGs have no authority to assess fees on their members unless their joint powers agreements empower them to, but that none of the agreements do. Thus, COGs lack authority to impose fees on their members without amending the agreements.
- To force COGs to assess fee authority would, under the contracts clause, unconstitutionally interfere with their agreements (Cal. Const., art. I, § 9).
- Even if COGs have fee authority, the cities and counties cannot pass the fees onto developers because they do not have authority to levy fees to offset costs incurred by

other agencies such as COGs. Rather, their fee authority only pertains to offset costs incurred by the city or county's own planning agency.

- Also, since the regional housing needs assessment does not provide a direct benefit to developers, the reasonable cost of providing the service would be difficult or impossible to determine.

LCC also asserts, regarding the fee authority of section 65584.1, that:

- This fee authority provides neither the COGs nor cities and counties with valid authority to impose fees for the distribution of regional housing needs. LCC asserts that the COG fee authority "unconstitutionally interferes with the organic structure of these councils of governments." Because COGs exist pursuant to a joint powers agreement between them and their cities and counties, LCC argues that the fee authority statute violates the state constitution when the agreement does not authorize the imposition of fees.
- Assuming there is COG fee authority, section 65584.1 purports to authorize the city or county to impose a fee on developers to reimburse itself for the COG fee. Section 65584.1 requires the fee to be imposed pursuant to section 66106, which limits the fee to the estimated cost of providing the service. However, the city or county is not providing the service to the developer, nor did the city or county incur costs to distribute regional housing needs. Since the COG provided the service and incurred the cost, LCC argues that the pass through fee is a tax that requires voter approval.

CBIA also presents various arguments against the fee authority in section 65584.1.

- Allowing costs of state-mandated regional planning to promote housing to be passed onto cities and counties, and from there to homebuilders, would further exacerbate the difficulties of providing affordable housing.
- Section 65584.1 does not provide authority for COGs to pass on their state-mandated costs to homebuilders or homebuyers by way of city or county fees. According to CBIA, COGs that use section 65584.1 would impair or interfere with their joint powers agreements in violation of the contracts clause of the California constitution. CBIA also argues that even if a COG implemented this new fee authority, the statute provides no guidance on how it could be lawfully implemented.
- The fee statute does not provide a valid basis for cities and counties to pass through costs they may incur for the support of the housing needs work performed by the COGs, and would not provide a basis for a valid fee for several reasons:
    - First, there is no basis for seeking reimbursement of costs incurred by other agencies. City/county fee authority is limited to the reasonable costs imposed on the city or county. There is no authority "to impose fees on private property owners or developers to 'reimburse' costs incurred by others."
    - Second, article XIII D of the California Constitution prohibits imposing a fee for general governmental services (art. XIII D, § 6, subd. (b)(5)). The fee prohibition applies to services available to the public at large in substantially the same manner as property owners. Because the service provided by COGs in distributing regional housing needs is available to the community on an equal basis, and "regional housing is a matter of statewide concern," charging a fee for

it is constitutionally prohibited. Also prohibited is a fee on property owners unless the service is actually used by, or immediately available to them (art. XIII D, § 6, subd. (b)(4)). The fee cannot be based on potential or future use of a service. Thus, any city/county fee for housing elements would actually be a tax requiring voter approval.

- Third, the fee authorized by section 65584.1 would not meet the criteria for the two types of fees recognized by the California Supreme Court: development and regulatory fees. A development fee is defined "for the purpose of defraying all or a portion of the cost of public facilities related to the development project." (Gov. Code, § 66000, subd. (b)). The planning costs in section 65584.1's fee do not defray costs of public facilities, nor do they defray impacts caused by particular development projects, as required by law, and therefore do not constitute a lawful development fee. Since housing element activities are incurred independent of any particular development project, regardless of the level of development, and even in its absence, development fees imposed for housing element activities would be unlawful. Regulatory fees, according to CBIA, would also not apply to this case because they cannot exceed the reasonable cost of providing the service or regulatory activity for which they are charged, and they cannot be levied for general revenue purposes. CBIA argues that there is no regulatory function for this fee, as COGs have no role regulating individual housing development projects. Rather, the intent is to raise revenue to free the state from reimbursing the state-mandated program.

- Finally, according to case law CBIA cites, conditions on development unrelated to the use of the property, that shift the burden of providing the costs of a public benefit to another not responsible or only remotely or speculatively benefiting from it, is an unreasonable exercise of the police power. CBIA also asserts that there must be a reasonable nexus between development activity and exactions imposed as a condition of that activity.

In response to SCAG's argument that the validity of section 65584.1 is unresolved so the Commission's decision would be premature, the Commission disagrees. The issue is not premature because the fee authority statute became effective August 16, 2004.[100] So by law, COGs have the authority to charge a fee as of August 16, 2004.

As to SCAG's argument that COGs are in reality collecting from themselves, the Commission also disagrees. COGS, as joint powers authorities, are legally separate entities from the parties to the agreement.[101] Each entity has separate funds, which are accounted for separately.[102] Thus, the Commission disagrees that COGs are collecting from themselves by collecting fees from member agencies.

---

[100] Statutes 2004, chapter 227, section 58 (Sen. Bill No. 1102). The statute was amended by Statutes 2004, chapter 818, section 1 (Sen. Bill No. 1777).

[101] Government Code section 6507; 65 Opinions of the California Attorney General 618, 623 (1982).

[102] Government Code sections 6504 and 6505.

In response to the arguments by CACOG, SCAG, LCC and CBIA that the fee authority of section 65584.1 impairs contracts, or SACOG's argument that this fee authority is not legitimate, the Commission also disagrees. The Commission, as an administrative agency, has no authority to declare a statute unconstitutional. Article III, section 3.5 of the state Constitution states:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
>
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.
>
> (b) To declare a statute unconstitutional.
>
> (c) To declare a statute unenforceable, or refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

In 1988, the California Supreme Court, in *Reese v. Kizer*,[103] described the purpose of article III, section 3.5. This provision was added to the Constitution in 1978 through Proposition 5. The purpose of the amendment was to prevent administrative agencies from using their own interpretation of the Constitution to thwart the mandates of the Legislature.[104] According to the ballot materials in support of Proposition 5, the proponents argued that the amendment would "insure that appointed officials do not refuse to carry out their duties by usurping the authority of the Legislature and the Courts."[105]

The Commission finds, therefore, that the Commission has no power to declare section 65584.1 unconstitutional or refuse to recognize it because no appellate court has determined that it is unconstitutional.

In the final analysis, the Commission finds that the test claim legislation does not impose "costs mandated by the state" on COGs because of the existence of fee authority in section 65584.1.

Section 65584.1 (added by Stats. 2004, ch. 227, Sen. Bill No. 1102, and amended by Stats. 2004, ch. 818, Sen. Bill No. 1777) states:

> Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations pursuant to Section 65584. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to

[103] *Reese v. Kizer* (1988) 46 Cal.3d 996.

[104] *Id.* at page 1002.

[105] *Id.* at page 1002, footnote 7.

> Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

This fee authority is plenary authorization to charge fees for services. The only limitation on the COG fee is that it "not exceed the estimated amount required to implement its obligations pursuant to Section 65584."

In *Connell v. Superior Court of Sacramento County*,[106] the court considered whether regulations that increased the purity of recycled water resulted in a reimbursable mandate. The *Connell* court found the fee authority is a question of law, so the evidence submitted regarding the fee's economic feasibility or sufficiency was not relevant.[107] The water districts' possession of the fee authority was dispositive of the question of the existence of a reimbursable mandate. The court rejected the districts' arguments that the fee would not be "sufficient to pay for the mandated costs" because it is unfeasible or economically undesirable for the districts to recover their costs.[108] As the *Connell* court stated:

> On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. … [¶] … [¶] We agree with appellants."[109]

The *Connell* court first explained the purpose of subvention. As the California Supreme Court stated regarding article XIII B, section 6 of the California Constitution, "Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues."[110] In upholding the constitutionality of the fee authority provision in section 17556, the Supreme Court stated that it "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound."[111]

The *Connell* court went on to interpret the plain meaning of "fee authority" in section 17556, subdivision (d) as the "right to exercise powers," or the "power or right to give commands [or] take action …."[112] The court rejected interpreting the statute to mean "a practical ability in light of surrounding economic circumstances," stating that if that had been the legislative intent, the Legislature would have used the term "reasonable ability" in the statute rather than "authority."[113]

---

[106] *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382.

[107] *Id.* at page 400.

[108] *Id.* at page 399.

[109] *Id.* at page 400.

[110] *Id.* at page 398, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d 482, 487.

[111] *Ibid.*

[112] *Id.* at page 401.

[113] *Id.* at page 400-401.

The *Connell* court also considered an argument that "fees levied by the districts 'cannot exceed the cost to the local agency to provide such service,' because such excessive fees would constitute a special tax."[114] The court stated that no one is suggesting the districts levy fees that exceed their costs.

The Commission finds the reasoning of the *Connell* case applies to this test claim reconsideration. Section 65584.1's fee authority provision grants authority to COGs for the "council's actual cost in distributing regional housing needs." The only limitation on the COG fee is that it "not exceed the estimated amount required to implement its obligations pursuant to Section 65584."

In view of *Connell*, the Commission does not find convincing the various arguments regarding the sufficiency or the difficulty of the basis for the fee. These arguments are not relevant to the legal inquiry because the sole consideration is whether COGs have fee authority.[115]

The Commission finds, therefore, that because COGs possess fee authority based on section 65584.1, COGs cannot be reimbursed for their activities in developing the regional housing needs analyses.

CONCLUSION

The Commission finds that the test claim legislation (Stats. 1980, ch. 1143) does not impose "costs mandated by the state" on COGs within the meaning of article XIII B, section 6 of the California Constitution and section 17556, subdivision (d) because (1) COGs are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6; and (2) the test claim legislation does not impose "costs mandated by the state" on COGs within the meaning of article XIII B, section 6 and Government Code section 17556 because of the COGs' fee authority provided in Government Code section 65584.1.

[114] *Id.* at page 402.

[115] *Id.* at page 400.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code sections 38048 (currently numbered 39831.5), 39831.3 and 39831.5, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739; Filed on December 22, 1997, By Clovis Unified School District, Claimant	No. 97-TC-22 (REMAND) *School Bus Safety II* 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 March 30, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this remanded test claim during a regularly scheduled hearing on March 30, 2005. Keith Petersen appeared on behalf of the claimant, Clovis Unified School District. Susan Geanacou appeared for the Department of Finance.

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 at the hearing by a vote of 4-0.

BACKGROUND

In 1997, claimant Clovis Unified School District submitted a test claim alleging a reimbursable state mandate for school districts to perform new activities by instructing pupils and informing parents of school bus safety procedures. The test claim statutes are Education Code sections 38048 (currently numbered 39831.5), 39831.3 and 39831.5, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739. In the original *School Bus Safety II* Statement of Decision, adopted July 29, 1999, the Commission concluded that the test claim legislation imposed the following reimbursable state-mandated activities:

- Instructing all prekindergarten and kindergarten pupils in schoolbus emergency procedures and passenger safety. (Ed. Code, § 39831.5, subd. (a); Ed. Code, § 38048, subd (a).)
- Determining which pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, have not been previously transported by a schoolbus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)

- Providing written information on schoolbus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, who were not previously transported in a schoolbus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Providing updates to all parents and guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, on new schoolbus safety procedures as necessary. The information shall include, but is not limited to: (A) a list of schoolbus stops near each pupil's home; (B) general rules of conduct at schoolbus loading zones; (C) red light crossing instructions; (D) schoolbus danger zone; and (E) walking to and from schoolbus stops. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Preparing and revising of a school district transportation safety plan. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Determining which pupils require escort. (Vehicle Code section 22112, subd. (c)(3).)
- Ensuring pupil compliance with schoolbus boarding and exiting procedures. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Retaining a current copy of the school district's transportation safety plan and making the plan available upon request by an officer of the Department of the California Highway Patrol. (Ed. Code, § 39831.3, subds. (a), (a)(1), (a)(2)(A), (a)(3), and (b).)
- Informing district administrators, school site personnel, transportation services staff, schoolbus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms. (Veh. Code, § 22112.)

In *State of California Department of Finance v. Commission on State Mandates* (02CS00994), this decision was challenged in Sacramento County Superior Court. The petitioner, Department of Finance, sought a writ directing the Commission to set aside the prior decision and to issue a new decision denying the test claim, for the following legal reasons:

- The transportation of pupils to school and on field trips is an optional activity because the State does not require schools to transport pupils to school or to undertake school activity trips.
- Prior to the enactment of the test claim legislation, the courts determined that when schools undertook the responsibility for transporting pupils they were required to provide a reasonably safe transportation program.
- To the extent the test claim legislation requires schools to transport pupils in a safe manner and to develop, revise and implement transportation safety plans, the test claim legislation does not impose a reimbursable state mandate because these activities are undertaken at the option of the school district and the legislation merely restates existing law, as determined by the courts, that schools that transport students

> do so in a reasonably safe manner. Therefore the test claim legislation does not require school districts to implement a new program or higher level of service.[116]

On December 22, 2003, the court entered judgment for the Department of Finance, and on February 3, 2004, ordered the Commission to set aside the prior Statement of Decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. At the March 25, 2004 Commission hearing, the Commission set aside the original *School Bus Safety II* decision and vacated the applicable parameters and guidelines and statewide cost estimate.[117]

However, the court left one issue for remand: the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

Claimant's Position

Claimant's response to the request for briefing, dated April 26, 2004, follows:

> You notified the claimant on March 26, 2004 that the Commission on State Mandates has adopted an order to set aside the decision on the above referenced test claim pursuant to an order of the Sacramento Superior Court. You requested the claimant to file and serve a brief by April 26, 2004 addressing two limited issues for rehearing. I respond to that request on behalf of the test claimant.
>
> The two issues are:
>
> 1. Whether IDEA or any other federal law requires school districts to transport any students, and if so,
>
> 2. Whether the test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.
>
> In the statement of decision for the test claim, adopted July 29, 1999, at footnote 13, the Commission has already made that determination of fact and law in the affirmative.

No further comments were filed after the release of the draft staff analysis.

State Agency's Position

The Commission received no state response to the request for briefing or to the draft staff analysis.

---

[116] Petition for Writ of Administrative Mandamus and Complaint for Declaratory Relief, dated July 9, 2002, pages 4-5.

[117] The original *School Bus Safety* (CSM-4433) statement of decision and parameters and guidelines were not part of the subject litigation.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[118] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[119] "Its 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."[120] 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.[121] 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.[122]

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.[123] 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.[124] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[125]

---

[118] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "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."

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

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

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

[122] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[126]

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.[127] 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."[128]

Issue: The Commission is ordered to rehear the *School Bus Safety II* test claim and issue a decision on this limited question:

- **Does the federal IDEA or any other federal law require school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs?**

In briefing the *School Bus Safety II* litigation, (*State of California Department of Finance v. Commission on State Mandates* (02CS00994)), the Department of Finance cited the 1992 California Supreme Court decision confirming the constitutionality of Education Code section 39807.5.[129] In that case, the Court found that the provision, which authorizes school districts to

---

[126] *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.

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

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

[129] *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251. Current Education Code section 39807.5 follows (added by Stats. 1999, ch. 646; substantively identical to the law analyzed in *Arcadia*):

> (a) When the governing board of any school district provides for the transportation of pupils to and from schools in accordance with Section 39800, or between the regular full-time day schools they would attend and the regular full-time occupational training classes attended by them as provided by a regional occupational center or program, the governing board of the district may require the parents and guardians of all or some of the pupils transported, to pay a portion of the cost of this transportation in an amount determined by the governing board.
>
> (b) The amount determined by the board shall be no greater than the statewide average nonsubsidized cost of providing this transportation to a pupil on a publicly owned or operated transit system as determined by the Superintendent of Public Instruction, in cooperation with the Department of Transportation.
>
> (c) For the purposes of this section, "nonsubsidized cost" means actual operating costs less federal subventions.

charge fees for pupil transportation, violated neither the free school guarantee nor equal protection clause of the California Constitution. In addition, the Court confirmed that, statutorily, California schools need not provide bus transportation at all. (*Arcadia Unified School Dist., supra,* 2 Cal.4th 251, 264.)

> Without doubt, school-provided transportation may enhance or be useful to school activity, but it is not a necessary element which each student must utilize or be denied the opportunity to receive an education.
>
> This conclusion is especially true in this state, since, as the Court of Appeal correctly noted, *school districts are permitted, but not required, to provide bus transportation*. ([Ed. Code,] § 39800.) If they choose, districts may dispense with bus transportation entirely and require students to make their own way to school. Bus transportation is a service which districts may provide at their option, but schools obviously can function without it. [Fns. omitted, emphasis added.]

Department of Finance's briefing to the court stated:

> There is no reimbursable mandate for activities undertaken at the option or discretion of a local government entity. Actions undertaken without legal compulsion (or threat of penalty for nonparticipation) do not trigger a state mandate and do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 743; 134 Cal.Rptr.2d 237, 249; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.) The test claim statutes all deal with safe practices when students are transported. But since districts are not required to transport pupils, the test claim statutes create no mandate. The transportation of students is a voluntary activity.[130]

By granting the Department of Finance's petition on all but the limited federal law question, the court agreed with the petitioner that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary.

Claimant's April 26, 2004 response to the Commission's request for briefing on the remaining federal law issue was: "In the statement of decision for the test claim, adopted July 29, 1999, at

---

> (d) The governing board shall exempt from these charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board.
>
> (e) A charge under this section may not be made for the transportation of handicapped children.
>
> (f) Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of pupils in the schools.

[130] Points and Authorities in Support of Petition for Writ of Mandate, dated September 30, 2003, page 8.

footnote 13, the Commission has already made that determination of fact and law in the affirmative." Footnote 13 follows in its entirety:

> Federal law, under the Individuals with Disabilities Education Act (IDEA), requires states to provide disabled children with special education and related services in the least restrictive environment. Therefore, instruction in schoolbus safety to prekindergarten and kindergarten pupils includes special education pupils with transportation listed in their individualized education program (IEP). The IEP is a written statement developed in a meeting between the school, the teacher, and the parents. The purpose of the IEP is to ensure a disabled child receives a free appropriate public education in the least restrictive environment. The IEP includes related services that may be required. Depending on the needs of the child, these related services may include transportation. The IDEA includes specific services, but is not limited to the provision of those services listed. The enumerated services include *transportation*, early identification and assessment of disabling conditions in children, and medical and counseling services. (Title 20, United States Code, section 1401(a)(17), (19).) Thus, the test claim goes beyond federal requirements in that under IDEA transportation services are discretionary.

Claimant asserts that by this footnote the Commission affirmatively determined that the IDEA requires school districts to transport students. However, the final sentence of the footnote in plain language concludes, "that under IDEA transportation services are discretionary." The Commission notes that the language of the footnote is unclear: initially suggesting that if an IEP determines that transportation is necessary for a particular student, it is required under the IDEA, but then concluding transportation is discretionary under the federal law. Regardless of how the footnote might be interpreted, the July 29, 1999 Statement of Decision, including footnote 13, was set aside by court-order and no longer has any legal effect. Therefore the issue must be re-examined and decided by the Commission.

A primary purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and *related services* designed to meet their unique needs and prepare them for employment and independent living." (20 U.S.C. § 1400(d)(1)(A), emphasis added.) Consistent with this purpose, the IDEA authorizes federal funding for states that provide disabled children with special education and "related services." "Related services," for the purposes of the IDEA, "means *transportation*, and such developmental, corrective, and other supportive services … as may be required to assist a child with a disability to benefit from special education … ." (20 U.S.C. § 1401(22), emphasis added.) Thus, transportation may be a necessary related service for individual disabled children as part of providing them with "a free appropriate public education." However, the Commission finds no evidence that *school bus* transportation is required in order to comply with the IDEA.

As an example, the California Department of Education periodically files a plan of compliance with the federal government as a condition of receiving IDEA funding. The plan in effect at the time the test claim statutes were enacted provides that "In lieu of providing transportation of an individual, the local education agency may reimburse the parent or nonpublic school or agency subject to a written agreement or contract for cost of actual and necessary travel incurred in transporting the child with disabilities at a rate to be determined by the local education agency governing board, but no less than the rate allowed for travel by the local education agency

employees."[131] Currently, the CDE has guidelines posted to its website, which define transportation options for use in developing an IEP, as follows:

> Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team.[132]

Certainly school districts may choose to transport these students directly by school bus, but neither federal nor state law requires this. Finally, even if school bus transportation is used for these students, there is no evidence in the record that the state and federal funding provided for transporting children with disabilities is inadequate to cover any pro rata costs that may result from the test claim statutes.

CONCLUSION

By granting the Department of Finance's petition in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Sacramento Superior Court found that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court left an issue for remand, ordering the Commission "to rehear the *School Bus Safety II* test claim and to issue a decision on the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs?"[133]

The Commission concludes that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program; therefore, pursuant to the court decision described above, and article XIII B, section 6 of the California Constitution, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

---

[131] *California State Plan for Part B of the Individuals with Disabilities Education Act and Section 619 (Preschool) for Fiscal Years 1994 through 1997*, version 4, page 145.

[132] At <http://www.cde.ca.gov/sp/se/sr/trnsprtgdlns.asp> [as of Mar. 8, 2005.]

[133] Peremptory Writ of Mandamus, *State of California Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case Number 02CS00994, dated February 3, 2004.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 918; Test Claim No: 97-TC-21; Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855) , Operative January 1, 2005.	No. 04-RL-9721-11 *School Accountability Report Cards* 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 July 28, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard this test claim reconsideration during a regularly scheduled hearing on May 26, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance. The motion to adopt the staff analysis resulted in a tie vote.

The Commission reheard and decided this test claim reconsideration during a regularly scheduled hearing on July 28, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Robert Miyashiro, with the Education Mandated Cost Network; Richard Hamilton, with the California School Boards Association; and Estelle Lemieux, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance.

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, denying the reconsidered portions of the test claim, by a vote of 3-2.

BACKGROUND

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

> Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21), was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

> The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.
>
> The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:
>
> - Salaries paid to schoolteachers, school site principals, and school district superintendents.
> - Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
> - "The degree to which pupils are prepared to enter the work force."
> - "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
> - "The total number of minimum days, . . . , in the school year."
> - Salary information provided by the Superintendent of Public Instruction.
>
> The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

The reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).)

School District and Interested Parties' Positions

In December 2004, interested parties and state agencies were asked to file briefs on the issues under reconsideration. On May 9, 2005, the Commission received comments on the draft staff analysis from Sweetwater Union High School District, stating complete disagreement with the conclusions; asserting that the test claim legislation imposed a higher level of service on school districts. The district's specific comments will be discussed in the analysis below.
On May 25, 2005, a late filing was received from the Education Management Group, disputing the conclusions of the staff analysis, particularly the findings recommended under the "costs mandated by the state" portion of the analysis.

At the May 26, 2005 Commission hearing, the following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association.

School Innovations and Advocacy outlined two issues: 1) whether school districts must prove that they use property tax revenues, and 2) whether the new requirements of the school accountability report card are a higher level of service. Regarding the first issue, School Innovations and Advocacy argued that school districts cannot prove that local property tax revenues are used to comply with specific mandates because the funds are commingled with other funds received through Proposition 98. School Innovations and Advocacy added that school district accounting procedures are largely regulated by the state, and the state does not require that funds be segregated. Unlike the case cited in staff's analysis, School Innovations and Advocacy contended that in this case, there is no specific appropriation or funding stream for the program. School Innovations and Advocacy maintained that nothing new happened for the Commission to believe that a new interpretation of the law is necessary.

With regard to the second issue and staff's position that the new requirements are minimal, School Innovations and Advocacy asserted that there needs to be a dollar amount or percentage standard that provides guidance because the program could be further amended in the future.[134] The California School Employees Association associated themselves with the comments made by School Innovations and Advocacy. The California School Employees Association disputed the argument that changes are minimal if school districts must break funds down to property tax revenues.[135]

Education Mandated Cost Network addressed the *de minimis* nature of the claim, arguing that while staff believes that incidental duties do not require reimbursement, staff did not establish a minimum dollar amount. Education Mandated Cost Network noted that the law specifies a thousand-dollar threshold for filing a reimbursement claim and that the Commission adopted a statewide cost estimate of $1.7 million for this program, and added that this estimate was the thirteenth largest of the 30 estimates adopted in 2002-2003.

Education Mandated Cost Network clarified that Proposition 98 does not appropriate money for any program. Rather, it establishes a minimum funding guarantee level for which the Legislature then makes appropriations to specific programs. Thus, Education Mandated Cost Network asserted that it is not sufficient to reference the Proposition 98 guarantee and conclude that the minimum requirements fund a particular program because an appropriation must be made to fund the program. Education Mandated Cost Network argued that the language of Proposition 98 is not specifically intended for the *School Accountability Report Card* program and concluded that the staff analysis has not overcome the original findings of the Commission. Education Mandated Cost Network strongly urged the Commission to reject the staff analysis and to let the 1998 decision stand.[136]

---

[134] May 26, 2005 Commission Hearing Transcript, pages 136-140.

[135] *Id*. at pages 140-141.

[136] *Id*. at pages 141-144.

The Education Coalition and the Association of California School Administrators associated their organizations "with the remarks made by the previous three speakers."[137]

The California Teachers Association agreed with all the previous comments and additionally urged the Commission "to oppose any test claim recommendation that would affect the funding source or perpetuate the under-funding of funds for the California schools."[138]

The California School Boards Association concurred with the previous comments, stating that the staff analysis does not address Government Code section 17556, subdivision (f), "which speaks of imposing duties that are expressly included in a ballot measure."[139]

Following the May hearing, another comment period was granted to the parties, including a one-week extension of time. Comments were received on July 8, 2005, from School Innovations & Advocacy. Those comments argue that all legislative amendments to requirements to the School Accountability Report Card are reimbursable if they were not "expressly included in a ballot measure;" that Proposition 98 funds should not be considered "program funds" required to be used as an offset to legislative amendments to School Accountability Report Cards; and that application of the 2003 *County of Los Angeles* decision requires "an analysis of the costs of the various legislative mandates related to the SARC [School Accountability Report Card]."

On July 8, 2005, Los Angeles Unified School District submitted a letter joining in the comments from School Innovations & Advocacy. Commission staff received comments from the California School Boards Association/Education Legal Alliance on July 11, 2005, and from Education Mandated Cost Network on July 18, 2005, explaining the organizations' oppositions to the staff analysis and also joining in the filing from School Innovations & Advocacy.

A late filing dated July 25, 2005, was received from School Innovations and Advocacy. The letter argues the Commission cannot consider recent amendments to Government Code section 17556, subdivision (f), when making its decision on reconsideration, because Assembly Bill (AB) 2855 only explicitly requests reconsideration "in light of federal statutes enacted and state court decisions rendered since these statutes were enacted."

State Agency Position

On May 6, 2005, the Commission received comments on the draft staff analysis from Department of Finance stating agreement with the draft staff analysis, and noting that the "administration intends to pursue legislation requiring the Commission to also reconsider the portion of this test claim related to Chapter 912, Statutes of 1997." Department of Finance concluded, "it appears that the omission of this statutory reference from AB 2855 was inadvertent."

Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance at the May 26, 2005 Commission hearing; they provided testimony continuing to support the staff analysis and recommendation. Department of Finance disagreed with the comments of the interested persons and argued that Government Code section 17556, subdivision (f), specifically states that ballot measures adopted by the voters on a statewide initiative do not impose

[137] *Id.* at page 144.

[138] *Ibid.*

[139] *Id.* at page 145.

reimbursable mandates for duties expressly included in the ballot measure. Department of Finance explained that the School Accountability Report Card is not limited to the provisions originally set out in the Education Code because the electorate recognized that the details of the model report card are subject to change and districts are required to comply with those changes. Therefore, Department of Finance asserted that this program is not reimbursable as it was a statewide ballot measure.[140]

No comments on the reconsideration were received from other state agencies.

Legislative Analyst's Office Report

On March 22, 2004, the Legislative Analyst's Office distributed a report entitled *Proposition 98 Mandates, Part III*.[141] This report to the Legislature discusses recommendations related to the *School Accountability Report Cards* mandate, as follows:

> Recommend the committee amend state law to waive reimbursement for mandates when federal law is changed, requiring activities similar to the state mandate.
>
> The federal No Child Left Behind (NCLB) Act requires report cards similar to the one required by the state. Since the state requirement was enacted first, however, state law directs CSM to recognize as reimbursable all mandated costs of the report cards.
>
> This law unnecessarily disadvantages the state. The state could eliminate the mandate, for instance, and schools would still be required under federal law to issue school report cards.
>
> In addition, NCLB provided substantial increases in district funding to pay for the new requirements of the act. Districts, therefore, have received funding for the cost of mandates in the new law.[142]

Following release of this report, AB 2855, in addition to ordering the reconsideration of the *School Accountability Report Cards* Statement of Decision, also amended Government Code section 17556, subdivision (c), to provide that when a "statute or executive order imposes a requirement that is mandated by a federal law or regulation," federal mandates enacted before *or after* the state law precludes a finding of costs mandated by the state.

---

[140] May 26, 2005 Commission Hearing Transcript, pages 145-149.

[141] *Proposition 98 Mandates, Part III*, at <http://www.lao.ca.gov/handouts/education/2004/Mandates_Part_III_032204.pdf> [as of May 10, 2005.]

[142] *Id.* at page 4.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[143] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[144] "Its 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."[145] 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.[146] 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.[147]

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.[148] 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.[149] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[150]

---

[143] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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."

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

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

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

[147] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[151]

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.[152] 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."[153]

Issue 1: What is the scope of the Commission's jurisdiction directed by AB 2855?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[154]

Since the Commission was created by the Legislature, its powers are limited to those authorized by statute.[155] Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim, and generally grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on AB 2855. Absent AB 2855, the Commission would have no jurisdiction to reconsider any part of the *School Accountability Report Cards* decision since the original decision was adopted and issued in 1998, well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by AB 2855, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the

---

[151] *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.

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

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

[154] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[155] Government Code section 17500 et seq.

Legislature.[156] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of AB 2855.

Under the rules of statutory construction, when the statutory language is plain the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][157]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[158] To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[159]

Statutes 2004, chapter 895, section 18 (AB 2855), directs the Commission to reconsider the prior final decision in *School Accountability Report Cards*, as follows:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
>
> (a) Chapter 1463 of the Statutes of 1989.
>
> (b) Chapter 759 of the Statutes of 1992.
>
> (c) Chapter 1031 of the Statutes of 1993.
>
> (d) Chapter 824 of the Statutes of 1994.
>
> (e) Chapter 918 of the Statutes of 1997.

Statutes 1997, Chapter 912.

Statutes 1997, chapter 912 was part of the original test claim decision, but was not included in the reconsideration statute. Therefore, Statutes 1997, chapter 912, as it amended Education Code section 33126, cannot be reconsidered by the Commission at this time.

---

[156] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[157] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[158] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[159] *Estate of Griswold, supra*, 25 Cal.4th at page 911.

Education Code Section 35256.

Although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was not added or amended by any of the statutes and chapters listed in AB 2855. No reimbursable state-mandated activities were attributed to this code section in the original Commission decision because it was added to the code through Proposition 98, and to date, Education Code section 35256 has never been amended by the Legislature. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The legislation does not specify a reimbursement period for any changes to the *School Accountability Report Card*s parameters and guidelines following the reconsideration of the underlying test claim decision. The courts have established a strong presumption against the retroactive application of statutes:

> As Chief Justice Gibson wrote for the court in *Aetna Cas. & Surety Co. v. Ind. Acc. Com., supra,* 30 Cal.2d 388 - the seminal retroactivity decision noted above – "[i]t is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent." (30 Cal.2d at p. 393.) This rule has been repeated and followed in innumerable decisions.[160]

In the absence of clear legislative intent to the contrary, the Commission finds that AB 2855 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *School Accountability Report Cards*, subsequent changes to the parameters and guidelines will be effective for reimbursement claims filed for the 2005-2006 fiscal year.

Issue 2: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Test Claim Legislation Subject to Reconsideration

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must 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.[161] The court has held that only one of these findings is necessary.[162]

The Commission finds that providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests.

---

[160] *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207.

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

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

First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to "promote a model statewide standard of instructional accountability and conditions for teaching and learning."[163] The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[164]

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, because the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a "program" and, thus, may be subject to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 3: Does the test claim legislation impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at state-mandated increases in the services provided by local agencies.[165]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[166] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[167] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the

---

[163] Education Code section 33126, as added to the Education Code by Proposition 98.

[164] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at page 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . administered by local agencies to provide service to the public."

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

[166] *Long Beach Unified School District, supra,* 225 Cal.App.4th 155.

[167] *Id.* at page 173.

> requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[168]

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f), was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: . . .
>
> (f) The statute or executive order imposes~~d~~ duties that ~~were~~ are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

> The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.
>
> (a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

---

[168] *Ibid.*

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1993, CHAPTER 1031 AND STATUTES 1994, CHAPTER 824:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), "duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election" do not impose reimbursable state mandates.
Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, follows. Amendments to the original initiative language are indicated in underline and strikethrough:

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card.

(a) The model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card shall include, but is not limited to, assessment of the following school conditions:

(1) ~~Student~~ Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads.

(5) Any assignment of teachers outside their subject areas of competence.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other ~~student~~ pupil support services.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement.

(11) Classroom discipline and climate for learning.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(b) In developing the statewide model ~~S~~school ~~A~~accountability ~~R~~report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the ~~S~~superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists~~, provided that~~ However, the majority of the task force shall consist of practicing classroom teachers.

In the original test claim filing, the claimants alleged the test claim statutes "impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98."[169] Claimants specifically alleged that Statutes 1993, chapter 1031 "amended Education Code section 33126 to add the requirement that school districts include an assessment of the degree to which students are prepared to enter the workforce," and Statutes 1994, chapter 824 "amended Education Code section 33126 to add the requirement that school districts include in their school accountability report cards (1) the total number of instructional minutes and (2) the total number of minimum days in the school year."[170] The claimants argued that "districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards" for the additional activities alleged.[171]

The Commission must determine whether the data elements identified are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise "necessary to implement, reasonably within the scope of" the original initiative. Intent to *change* the law must not be presumed by an amendment. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

---

[169] *Test Claim Filing*, Administrative Record [AR], page 43.

[170] *Id.* at page 44.

[171] *Id.* at page 45.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][172]

Proposition 98, "The Classroom Instructional Improvement and Accountability Act," was adopted by the voters in 1988. The initial statement of "Purpose and Intent" declared, in part, "The People of the State of California find and declare that:"

> (e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

Proposition 98, section 13, provides: "No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." (Emphasis added.) Both Statutes 1993, chapter 1031, and Statutes 1994, chapter 824 were passed by a two-thirds vote of the Legislature and signed by the Governor.[173] Each statute also affirmatively states: "The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[174] The Commission must presume legislative amendments to the requirements for the School Accountability Report Card are constitutionally valid,[175] and thus such amendments must also be presumed to further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a "new program."

In this instance, the Commission finds that the legislation adding subdivisions (a)(14) through (16) requires data be provided in the School Accountability Report Card that was not expressly included in the original requirements of Proposition 98. The following data elements are new:

- The degree to which pupils are prepared to enter the workforce.
- The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of

---

[172] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[173] Bill histories found at < http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0151-0200/ab_198_bill_history> (Stats. 1993, ch. 1031) and < http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1651-1700/sb_1665_bill_history> (Stats. 1994, ch. 824) [as of July 20, 2005.]

[174] AR, pages 69 and 71.

[175] Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

the instructional minutes per school year required by state law, separately stated for each grade level.

- The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

However, the addition of this information to the School Accountability Report Card may be interpreted as "reasonably within the scope of" the original initiative. Either way, this does not necessarily rise to the level of a higher level of service or impose costs mandated by the state within the meaning recognized by the courts. As explained below, these incidental duties do not require subvention.

Sweetwater Union, in comments received May 9, 2005, asserts, "Proposition 98 was the base for the law requiring School Accountability Report Cards and the 13 original requirements, and created the measuring point upon which the required service was based. The onslaught of additional School Accountability Report Card requirements through legilative [sic] actions, intended to provided [sic] additional information to the public, elevated the required points of service to a higher level."

Assuming, for purposes of analysis, that the claimants did meet their burden of proving a higher level of service for the new information required to be included in the School Accountability Report Card, they have not met their burden of proving costs mandated by the state. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required. The court concluded:

> Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for purposes of Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.
>
> [¶]…[¶]
>
> [M]erely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Finally, the court concluded (*id.*, at p. 1195):

> Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking

> reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim legislation].

Likewise here, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." Sweetwater Union's comments on the draft staff analysis argue this "**IS NOT** material to the issue of whether or not a mandate has been imposed."[176] The district further states that this citation "does not reflect: (1) the wording that appears in; or (2) the intention of; the State's Constitutional protection provided to local governmental agencies." The district does not explain how the *County of Los Angeles* decision is distinguishable from the test claim under reconsideration, but rather implies that the court's decision violates certain protections to local agencies established by the California Constitution. In exercising its jurisdiction to decide test claims, the Commission must follow the courts' rulings in precedential decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court's published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded. Therefore, the Commission follows the court's analysis and finds no costs mandated by the state were imposed in these circumstances.

In comments received July 8, 2005, School Innovations & Advocacy states:

> Finally, Commission staff cites *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, as support for the argument that the legislative amendments to the SARC are *de minimis* and do not mandate increased costs, therefore no reimbursement is required. [Footnote and citation omitted.] However, staff provides no analysis of the costs of the various legislative mandates related to the SARC. Indeed, the Commission's prior ruling on these mandates suggest the cost is not minimal. The Commission adopted a statewide cost estimate for SARC I of $1.7 million. It is our understanding that in order of total cost SARC I was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of these 30 claims can be considered *de minimis* and not reimbursable? Staff should clearly state a standard by which SARC I costs can be measured to determine whether or not they are *de minimis.* Is there a dollar amount threshold? Is the standard based on the percentage of the legislative amendments costs compared to the total SARC costs? Is each legislative amendment assessed individually, or should the Commission look at the aggregate costs of all legislative amendments to determine whether costs are *de minimis?* Without such an analysis the argument that the legislative mandates related to SARC are *de minimis* is simply a stated conclusion rather than a finding based on evidence.

First, the original staff analysis did not discuss "*de minimis*" costs or activities. *De minimis* is defined in Black's Law Dictionary (7th ed.) as "Trifling, minimal," or "so insignificant that a court may overlook it in deciding an issue or case." The application of the *County of Los Angeles* decision is focused on the court's finding that "In the case of an existing program," (in this case, the original School Accountability Report Card requirements established by

[176] Emphasis in original.

Proposition 98) "an increase in existing costs does not result in a reimbursement requirement." In addition, examining whether legislative amendments "can be complied with by a minimal reallocation of resources," is not synonymous with finding that those amendments result in *de minimis* costs.

However, as the issue was raised repeatedly by the interested parties at the May 2005 hearing, and in subsequent written comments, we will address the *de minimis* argument here. The California Supreme Court in *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 888-890, discussed a *de minimis* standard as it applied in a situation where there is an existing federal law program, (non-reimbursable pursuant to the express language of art. XIII B, § 6 and Gov. Code, § 17556, subd. (c)) and the state then "articulated specific procedures, not expressly set forth in federal law."[177] The Court expressly affirmed the appellate decision in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, as follows:

> These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; *viewed singly or cumulatively, they did not significantly increase the cost of compliance* with the federal mandate.
>
> The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code, section 17556, subdivision (c). We reach the same conclusion here.
>
> *Indeed, to proceed otherwise in the context of a reimbursement claim would produce impractical and detrimental consequences.* The present case demonstrates the point. The record reveals that in the extended proceedings before the Commission, the parties spent numerous hours producing voluminous pages of analysis directed toward determining whether various provisions of Education Code section 48918 exceeded federal due process requirements.
>
> [¶…¶]
>
> In light of these considerations, we agree with the conclusion reached by the Court of Appeal in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304: for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law--and whose costs are, in context, de minimis--should be treated as part and parcel of the underlying federal mandate. [Emphasis added.]

To analogize to the School Accountability Report Cards claim, there is an existing voter-initiative program, (non-reimbursable pursuant to art. XIII B, § 6 and Gov. Code, § 17556, subd. (f),) for which the state Legislature subsequently articulated procedures which were not explicit in the original voter-initiative. Following the logic expressed by the California Supreme Court in the recent *San Diego Unified School Dist.* decision, the legislative requirements under reconsideration here should be viewed as part and parcel of the underlying Proposition 98 mandate. Note that the Court did not come up with a dollar amount as a threshold for

[177] *Id.* at page 888.

determining *de minimis* additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be *de minimis*, "in context."

There are several problems with the assertions made by the interested parties in regards to a *de minimis* analysis. First is reliance on the statewide cost estimate for the original test claim decision in order to establish whether the costs claimed are *de minimis* in nature. The statewide cost estimate for School Accountability Report Cards (97-TC-21) was adopted March 25, 1999 and contained the following findings:

> **Methodology**
>
> To arrive at the total statewide cost estimate, staff:
>
> - Used 531 unaudited actual claim totals filed with the State Controller for prior fiscal years for which claims were filed, [fn. Current data as of February 1999.] and
> - Projected current and future fiscal year totals using the following formula:
>
> *Prior year claim total ($) x The Implicit Price Deflator* [fn. As projected by the Department of Finance.]
>
> **Recommendation**
>
> Staff recommends that the Commission adopt this proposed statewide cost estimate in the amount of $5,713,000 for costs incurred in complying with the provisions set forth in the test claim statutes.
>
> Following is a breakdown of estimated total costs per fiscal year:
>
> | **Fiscal Year** | **Total** |
> |---|---|
> | 1996-97 | $ 923,927 |
> | 1997-98 | $1,564,310 |
> | 1998-99 | $1,592,468 |
> | 1999-00 | $1,632,279 |
> | Total | $5,712,984 |
> | **Total (rounded)** | **$5,713,000** |
>
> Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of $5,712,984 has been rounded to $5,713,000.

The first problem with relying on the statewide cost estimate as a factor in defining a *de minimis* standard in this case is in using unaudited claims data. Second, the original decision and claims include a significant number of activities attributed to Statutes 1997, chapter 912,[178] which is not subject to this reconsideration. From the statewide cost estimate data, it is impossible to determine how much of the costs are solely attributable to Statutes 1997, chapter 912.

School Innovations & Advocacy's July 8, 2005 comments, as well as statements made by the Education Mandated Cost Network at the May hearing, assert that "in order of total cost SARC I was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does

[178] See the Conclusion, below.

this mean that more than half of the these claims can be considered *de minimis* and not reimbursable?"

The Commission finds that this "numbers" argument is equally misleading. A *de minimis* analysis should not compare the School Accountability Report Card claims to the size of other mandates claims, but rather compare how the claims fit into the larger pre-existing program of providing a School Accountability Report Card under Proposition 98, and how significant the claims are in light of the state funding available under Proposition 98.

The Commission cannot analyze the first *de minimis* approach because we have no evidence in the record regarding what the true cost to schools would be of completing an annual School Accountability Report Card if the Legislature had *never* made amendments following the original Proposition 98 requirements. To make a fair comparison, the Commission would have to know what it costs to complete the School Accountability Report Card, then determine what percentage of the costs are solely attributable to the activities subject to reconsideration. Indeed, statements of the California Supreme Court suggest that the Commission should not be expected to undertake such an "impractical" analysis when determining mandates claims.[179]

The second approach is to compare the costs of the activities to the funding available. In order to make a reasonable funding comparison, we can examine the cost estimate data from the 1999-2000 fiscal year. The statewide cost estimate uses a figure of $1,632,279 for costs from School Accountability Report Cards for 1999-2000. Ignoring the fact that a significant portion of the $1.6 million estimate should be attributable to Statutes 1997, chapter 912, we will use this figure. School districts received over $27 billion in state Proposition 98 funds for 1999-2000.[180] $1,632,279 is .006 percent of $27,162,572,602. Expressed another way, this is 6 cents out of every $1000 in state funding. The Commission asserts that this is a *de minimis* figure, in every sense of the term.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, "Key Statewide Averages Fiscal Year 2001-02"[181] demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,[182] and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) "No state duty of subvention is triggered where the local agency is

---

[179] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 889.

[180] "Key Statewide Averages Fiscal Year 1999-00"At <http://www.cde.ca.gov/ds/fd/ks/k12educ9900.asp> [as of Jul. 20, 2005.] The CDE is the department statutorily charged with receiving school district and county office of education budget, audit, apportionment, and other financial status reports, pursuant to Education Code section 42129.

[181] At <http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp> [as of Jul. 20, 2005.]

[182] Over $31 billion for fiscal year 2000-2001.

not required to expend its proceeds of taxes." (*Redevelopment Agency v. Commission on State Mandate*s (1997) 55 Cal.App.4th 976, 987.)

Sweetwater Union, in comments received May 9, 2005, asserts, "Under current law, Revenue Limits are the primary source of funding for a school district, and consist of the combination of State revenues and Local revenues. Local property taxes are collected by a county tax collector, and reported to the state for purpose of reducing the State level of funding for school district Revenue Limits. ... In addition, since Proposition 13, local agencies DO NOT have the ability to increase property taxes to accommodate State imposed mandated higher levels of service."

The Commission agrees that school districts are not able to increase property taxes in order to pay for School Accountability Report Cards; however, as described by the courts, the *required* expenditure of tax revenues is a threshold issue for finding "costs mandated by the state."

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

> We need not, and do not, determine whether claimants have been legally compelled to participate in the Chacon-Moscone Bilingual Bicultural Education program, or to maintain a related advisory committee. Even if we assume for purposes of analysis that claimants have been legally compelled to participate in the … program, we nevertheless conclude that under the circumstances here presented, *the costs necessarily incurred* in complying with the notice and agenda requirements under that funded program *do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary* notice and agenda related *expenses*. [Emphasis added.]

(*Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that state funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a second and independent ground, the Commission finds that the test claim legislation does not impose costs mandated by the state.

On May 25, 2005, a late filing was received from the Education Management Group. The letter asserts that staff's analysis on costs mandated by the state is based on a new legal theory requiring schools to prove that reimbursable mandated costs are paid from a property tax source. The Education Management Group argues this would make it impossible for school districts to prove any past or future mandate claims, due to an accounting burden that schools cannot meet.

The Commission finds that the interested party takes the funding argument out of context. The analysis is on a test claim for School Accountability Report Cards, which, as previously stated, is uniquely tied to the Proposition 98 funding guarantee. As described above, districts receive well over 31 billion dollars a year through Proposition 98; therefore the Commission finds that to receive reimbursement for this test claim, districts have the burden to prove that they are required to exceed Proposition 98 funding in order to provide annual School Accountability Report Cards.

Interested parties argue that if this analysis is adopted by the Commission, districts are going to be forced in future mandate claims to prove that they used their Proposition 98 funds to offset *all* state mandate requirements. This is an erroneous assumption. As a quasi-judicial body, each of the Commission's mandate decisions must be supported by current constitutional, statutory and case law, but each decision is limited to the claim presented and Commission decisions are not precedential. However, the Commission also notes that this decision does *not* present a novel theory of law as stated in the late filing. This exact issue and language was heard and adopted by the Commission over a year ago at the March 2004 hearing on *School Accountability Report Cards II and III*.

Thus, for the reasons stated above, the Commission finds that Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

STATUTES 1989, CHAPTER 1463 AND STATUTES 1992, CHAPTER 759:

Education Code Section 35256.1.

Education Code section 35256.1, as added by Statutes 1989, chapter 1463:

> In addition to the information required under Section 35256, each School Accountability Report Card shall include the information required under Section 41409.3.

The requirement to include additional information in the School Accountability Report Card is codified in this Education Code section, but the requirement is expressed in detail as part of Education Code section 41409.3, also added by Statutes 1989, chapter 1463. Therefore, the requirement to "include the information required under Section 41409.3" will be discussed below, under the "Education Code section 41409.3" heading.

Education Code Section 41409.

Education Code section 41409 was added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759.[183] The code section requires the state Superintendent of Public Instruction to "determine the statewide average percentage of school district expenditures that are allocated to the salaries of administrative personnel, … [and] also shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of teachers."

[183] Further amendments by Statutes 2001, chapter 734 (AB 804), was the subject of the *School Accountability Report Cards II and III* Statement of Decision.

Education Code section 41409, subdivision (c), provides:

> The statewide averages calculated pursuant to subdivisions (a) and (b) shall be provided annually to each school district for use in the school accountability report card.

This statute, as amended by Statutes 1992, chapter 759, was found in the Commission's April 23, 1998 Statement of Decision to impose a mandate for the inclusion of information on "salaries paid to schoolteachers, school site principals, and school district superintendents."

The Commission finds that Education Code section 41409 does not directly require any activities of school districts, but is a directive to the state Superintendent of Public Instruction to provide certain information to school districts. Thus, Education Code section 41409 does not impose a new program or higher level of service on school districts. However, Education Code section 41409.3 does require districts to include this information in their School Accountability Report Cards, as discussed below.

Education Code Section 41409.3.

Education Code section 41409.3, as added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, follows:

> Each school district, except for school districts maintaining a single school to serve kindergarten or any of grades 1 to 12, inclusive, shall include in the school accountability report card required under Section 35256 a statement that shall include the following information:
>
> (a) The beginning, median, and highest salary paid to teachers in the district, as reflected in the district's salary scale.
>
> (b) The average salary for schoolsite principals in the district.
>
> (c) The salary of the district superintendent.
>
> (d) Based upon the state summary information provided by the Superintendent of Public Instruction pursuant to subdivision (b) of Section 41409, the statewide average salary for the appropriate size and type of district for the following:
>
> (1) Beginning, midrange, and highest salary paid to teachers.
>
> (2) Schoolsite principals.
>
> (3) District superintendents.
>
> (e) The statewide average of the percentage of school district expenditures allocated for the salaries of administrative personnel for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction pursuant to subdivision (a) of Section 41409.
>
> (f) The percentage allocated under the district's corresponding fiscal year expenditure for the salaries of administrative personnel, as defined in Sections 1200, 1300, 1700, 1800, and 2200 of the California School Accounting Manual published by the State Department of Education.
>
> (g) The statewide average of the percentage of school district expenditures allocated for the salaries of teachers for the appropriate size and type of district

for the most recent fiscal year, provided by the Superintendent of Public Instruction, pursuant to subdivision (a) of Section 41409.

(h) The percentage expended for the salaries of teachers, as defined in Section 1100 of the California School Accounting Manual published by the State Department of Education.

The Commission agrees that prior to the adoption of Statutes 1989, chapter 1463, adding Education Code sections 35256.1 and 41403.9, there was no state requirement for including local and statewide teacher, principal, and superintendent salary information in the School Accountability Report Card. The CDE website has files available for download containing all of the statewide data needed for the School Accountability Report Card (subdivisions (d) through (h).) The CDE website also provides a School Accountability Report Card template for optional use by school districts, which contains all of the state data to meet this requirement already filled in.[184] The district does need to gather and enter their own salary information on the state template, or on the district's own form.

Proposition 98 added Education Code section 35256, which includes the provisions: "The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126;" and "Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education."[185]

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

The same analysis for finding a new program or higher level of service and costs mandated by the state regarding data elements added to the School Accountability Report Card through legislative amendments to Education Code section 33126, as discussed above, applies to Education Code sections 35256.1 and 41409.3. In brief, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources."[186] In addition, in *Department of Finance v. Commission on State Mandates, supra,* 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that

---

[184] At <http://www.cde.ca.gov/ta/ac/sa/> [as of Jul. 20, 2005.]

[185] The full text of Education Code section 35256 is above.

[186] *County of Los Angeles v. Commission on State Mandates, supra,* 110 Cal.App.4th at pages 1193-1194.

the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35256.1, as added by Statutes 1989, chapter 1463, and Education Code sections 41409 and 41409.3, as added Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, do not impose a new program or higher level of service on school districts, and do not impose costs mandated by the state.

STATUTES 1997, CHAPTER 918:

Education Code Section 35258.

Education Code section 35258, as added by Statutes 1997, chapter 918:

> On or before July 1, 1998, each school district that is connected to the Internet shall make the information contained in the School Accountability Report Card developed pursuant to Section 35256 accessible on the Internet. The School Accountability Report Card information shall be updated annually.

The original School Accountability Report Card distribution requirement from Proposition 98 was codified in Education Code section 35256 (see full text and discussion above.) Subdivision (c) follows:

> The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

Statutes 1997, chapter 918, section 1 (uncodified), provides:

> (a) The Legislature finds and declares that, although our state has embraced technology in creating a revolution of growth, our schools have not kept pace with this technology revolution. Access to information through the use of technology has become an integral and crucial part in the decisionmaking processes of government, industry, and the home. However, our schools do not facilitate access to information through one of the most available information technology mediums, the Internet.
>
> (b) It is the intent of the Legislature to improve the access of parents and the community to school-based information.

It is clear from the adoption of Education Code section 35256 as part of the 1988 Proposition 98 school funding scheme, the electorate wanted districts to provide widespread accessibility for the School Accountability Report Card. In 1997, the Legislature recognized that new technology was now widely available for this purpose and newly required that all districts with an existing connection to the Internet must use this technology to disseminate School Accountability Report Cards.

By requiring a new method for publicizing and distributing the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources."[187] In

[187] *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th at pages 1193-1194. See full discussion, above.

addition, in *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35258, as added by Statutes 1997, chapter 918, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Education Code sections 33126, 35256.1, 35258, 41409, and 41409.3, as added or amended by Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918, do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In the case of reimbursable state-mandated activities from Statutes 1997, chapter 912, the Commission does not have statutory authority to rehear that portion of the original decision.[188]

---

[188] The original Statement of Decision found that Statutes 1997, chapter 912, "amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:"

- results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment (§ 33126, subd. (b)(1));
- for schools with high school seniors, the average verbal and math Scholastic Assessment Test scores to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period (§ 33126, subd. (b)(1));
- the one-year dropout rate for the schoolsite over the most recent three-year period (§ 33126, subd. (b)(2));
- the distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period (§ 33126 subd. (b)(4));
- the total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period (§ 33126, subd. (b)(5));

Finally, although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was added by Proposition 98, and not added or amended by one of the statutes named in AB 2855. No reimbursable activities were attributed to Education Code section 35256 in the original decision.

- any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period (§ 33126, subd. (b)(5));
- the annual number of schooldays dedicated to staff development for the most recent three-year period (§ 33126, subd. (b)(10)); and
- the suspension and expulsion rates for the most recent three-year period (§ 33126, subd. (b)(11)).”

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 912 and 918; Test Claim No: 97-TC-21; Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), and Statutes 2005, Chapter 677, Section 53 (Sen. Bill No. 512).	No. 04-RL-9721-11, 05-RL-9721-03 *School Accountability Report Cards* 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 January 26, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on January 26, 2006. Lenin del Castillo appeared for the Department of Finance.

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 at the hearing by a vote of 5 to 2.

Summary of Findings

The Commission finds that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Statutes 2005, chapter 677, section 53:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005 for purposes of establishing the reimbursement period for the revised parameters and guidelines.

Background

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

> Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21) was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

> The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.
>
> The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:
>
> - Salaries paid to schoolteachers, school site principals, and school district superintendents.
> - Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
> - "The degree to which pupils are prepared to enter the work force."
> - "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
> - "The total number of minimum days, . . . , in the school year."
> - Salary information provided by the Superintendent of Public Instruction.
>
> The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:
>
> - Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
> - The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.

- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

First Reconsideration Decision: *School Accountability Report Cards (04-RL-9721-11)*

Statutes 2004, chapter 895, section 18 (AB 2855), directed the Commission to reconsider the prior final decision in *School Accountability Report Cards* for Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918. AB 2855 named the other statutes with specificity, but did not include Statutes 1997, chapter 912; therefore the Commission found it did not have jurisdiction to reconsider that portion of the original *School Accountability Report Cards* decision.

The AB 2855 reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).) A fifth member was appointed to the Commission before the next hearing.

The Statement of Decision on the AB 2855 reconsideration was adopted at the July 28, 2005 Commission hearing, denying reimbursement for the reconsidered portions of the original test claim.

Second Reconsideration: *School Accountability Report Cards (05-RL-9721-03)*

The Legislature subsequently amended AB 2855, through Statutes 2005, chapter 677, section 53 (SB 512, urgency, operative Oct. 7, 2005), as follows (changes indicated in underline and strikethrough):

> Section 18 of Chapter 895 of the Statutes of 2004 is amended to read:
>
> Sec. 18. (a) Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, for paragraphs (1) to (5), inclusive, and on or before January 31, 2006, for paragraph (6), reconsider its decision in 97-TC-21,

relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes, particularly in light of federal and state statutes enacted and state court decisions rendered since these statutes were enacted:

~~(a)~~(1) Chapter 1463 of the Statutes of 1989.
~~(b)~~(2) Chapter 759 of the Statutes of 1992.
~~(c)~~(3) Chapter 1031 of the Statutes of 1993.
~~(d)~~(4) Chapter 824 of the Statutes of 1994.
~~(e)~~(5) Chapter 918 of the Statutes of 1997.
(6) Chapter 912 of the Statutes of 1997.

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

(c) Notwithstanding any other provision of law, the parameters and guidelines associated with the test claim of 97-TC-21 shall be adjusted to conform to the decision of the Commission on State Mandates on its reconsiderations.

The Commission must now reconsider Statutes 1997, chapter 912, which was not originally included in the AB 2855 reconsideration statute, as well as amend the reimbursement period for the reconsidered test claim to conform with the express language of SB 512.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[189] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[190] "Its 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."[191] 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

[189] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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."

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

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

task.[192] 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.[193]
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.[194] 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.[195] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[196]
Finally, the newly required activity or increased level of service must impose costs mandated by the state.[197]
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.[198] 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."[199]

Issue 1: What is the scope of the Commission's jurisdiction and operative date of the reconsidered decisions directed by AB 2855 and SB 512?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[200]

---

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

[193] *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, 835-836 (*Lucia Mar*).

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

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

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

[197] *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.

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

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

[200] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

The court in *Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 149-150, found that "in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. (*Olive Proration etc. Com. v. Agri. etc. Com*. (1941) 17 Cal.2d 204, 209 [109 P.2d 918].)" In the amendments made by SB 512, the Legislature did not direct the Commission to set aside the AB 2855 reconsideration, completed July 28, 2005, and it is now past the 30-day time period in which a further reconsideration could have been requested pursuant to Government Code section 17559. Therefore, in the absence of a court or legislative order, the July 28, 2005 Statement of Decision is final, except for amending the period of reimbursement to conform to the express language of SB 512, as discussed below.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The original legislation did not stipulate a reimbursement period for any changes to the *School Accountability Report Card*s parameters and guidelines following the reconsideration of the underlying test claim decision. However, when AB 2855 was amended by SB 512 (urgency, operative Oct. 7, 2005), the intended operative date of the reconsidered decision was specified, as follows:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus, both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005, for purposes of establishing the reimbursement period for the revised parameters and guidelines.

Issue 2: Is Statutes 1997, chapter 912 subject to article XIII B, section 6 of the California Constitution?

In order for Statutes 1997, chapter 912 to be subject to article XIII B, section 6 of the California Constitution, the legislation must 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.[201] The court has held that only one of these findings is necessary.[202]

Statutes 1997, chapter 912 modified the content requirements for School Accountability Report Cards. Providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to "promote a model statewide standard of instructional accountability and conditions for teaching and

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

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

learning."[203] The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[204]

Statutes 1997, chapter 912 also satisfies the second test that triggers article XIII B, section 6, because it requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a "program" and, thus, Statutes 1997, chapter 912 may be subject to article XIII B, section 6 of the California Constitution if the test claim legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 3: Does Statutes 1997, chapter 912 impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at state-mandated increases in the services provided by local agencies.[205]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[206] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[207] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements

---

[203] Education Code section 33126, as added to the Education Code by Proposition 98.

[204] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at page 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . administered by local agencies to provide service to the public."

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

[206] *Long Beach Unified School Dist., supra,* 225 Cal.App.4th 155.

[207] *Id.* at page 173.

> constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[208]

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f) was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: . . .
>
> (f) The statute or executive order imposes~~d~~ duties that ~~were~~ are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

> The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.
>
> (a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.
>
> (b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

---

[208] *Ibid.*

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1997, CHAPTER 912:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), "duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election" do not impose reimbursable state mandates.

Education Code section 33126, as amended by Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 912, follows. Amendments to Education Code section 33126 by Statutes 1997, chapter 912 are indicated in underline and strikethrough:

~~In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model school accountability report card.~~

(a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

~~(a)~~ (b) The ~~model~~ school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period. After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chpter 6 (commencing with Section 60800) of Part 33, the school accountability report card shall include pupil achievement by grade level, as measured by the results of the statewide assessment. Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System information for the most recent three-year period.

(5) The total number of the schools's credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials and ~~A~~any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other pupil support services.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the work force.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

~~(b) In developing the statewide model school accountability report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists. However, the majority of the task force shall consist of practicing classroom teachers.~~

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current

copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

In the original test claim filing, the claimants alleged the test claim statutes "impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98."[209] Claimants specifically alleged that Statutes 1997, chapter 912 "amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:"

(1) Results by grade level of specified student assessment tools (such as SAT scores) for the most recent three-year period;

(2) the one year dropout rate for the schoolsite over the most recent three-year period;

(3) the distribution of class sizes by grade level, the average class size, and the percentage of pupil [sic] in kindergarten and grades 1 through 3 participating in the state's Class Size Reduction Program;

(4) the total number of credentialed teachers, the number of teachers relying upon emergency credentials, and the assignment of teachers outside of their subject area of competence for the most recent three-year period;

(5) the annual number of school days dedicated to staff development for the most recent three-year period; and

(6) suspension and expulsion rates for the most recent three year period.[210]

The claimants argued that "districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards" for the additional activities alleged.[211]

First, we examine the language added by Statutes 1997, chapter 912 as subdivision (c). This subdivision does not actually require any new activities of school districts, nor were any allegations included with specificity in the original test claim filing. Activities from subdivision (c) were proposed at the parameters and guidelines phase, but were ultimately denied by the Commission because the specific activities were not pled at the test claim phase, and no determination was made in the 1998 Statement of Decision.[212] For completeness, the subdivision will be examined here. The provision begins: "It is the intent of the Legislature that schools *make a concerted effort to* notify parents of the purpose of the school accountability report cards …" [Emphasis added.] The plain meaning of "make a concerted effort to" is not the same as "shall," which the Legislature could have expressed simply by using the word "shall."[213] Any notification activities regarding the School Accountability Report Card

[209] *Test Claim Filing*, Administrative Record [AR], page 43.

[210] *Id.* at pages 44-45.

[211] *Id.* at page 45.

[212] June 25, 1998 Hearing, Proposed Parameters and Guidelines, Staff Analysis. (AR, p. 286.)

[213] The word "shall" is used in subdivisions (a) and (b), but not in subdivision (c). "Of course, when different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended." *People v. Jones* (1988) 46 Cal.3d 585, 596.

contained in Education Code section 33126 are merely discretionary or precatory in nature -- if an activity may be performed at the option of the school district, there is no state mandate.[214] Explicit publication requirements for the School Accountability Report Card were established in Proposition 98, and remain good law in Education Code section 35256.[215]
Education Code section 33126, as amended by Statutes 1997, chapter 912, also altered the express language of some of the School Accountability Report Card data elements originally required by Proposition 98. For the reconsideration directed by SB 512, the Commission must determine whether the portions of Education Code section 33126, subdivision (b), as amended by Statutes 1997, chapter 912, are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise "necessary to implement, reasonably within the scope of" the original initiative. Intent to *change* the law must not be presumed by an amendment. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][216]

Proposition 98, "The Classroom Instructional Improvement and Accountability Act," was adopted by the voters in 1988. The initial statement of "Purpose and Intent" declared, in part, "The People of the State of California find and declare that:"

> (e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

Proposition 98, section 13, provides: "No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." (Emphasis added.) Statutes 1997, chapter 912 was passed by a two-thirds vote of the Legislature and signed by the Governor.[217] The statute also affirmatively states: "The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[218] The Commission must presume legislative amendments to the requirements for the School Accountability Report Card

---

[214] *Kern High School District, supra,* 30 Cal.4th 727, 742.

[215] Education Code section 35256, as added by Proposition 98, requires that: "(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request."

[216] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[217] Bill history found at <http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0551-0600/ab_572_bill_19971012_history.html> (Stats. 1997, ch. 912) [as of Nov. 1, 2005.]

[218] AR, page 77.

are constitutionally valid,[219] and thus any amendments must further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a "new program." Regarding the data amendments from Statutes 1997 chapter 912, the original claimants agreed that any requirements "to include the original thirteen components listed in Proposition 98 do not impose a reimbursable state-mandated new program," since this falls squarely within the long-standing exception to costs mandated by the state articulated in Government Code section 17556, subdivision (f). However, there was no comparison made between the original 13 data elements explicitly established in Proposition 98, and the amendments of 1997. In the test claim filing, all amendments to the precise language of Education Code section 33126 were alleged to impose a new program or higher level of service, and costs mandated by the state.

Proposition 98 requires "every local school board to prepare a School Accountability Report Card to guarantee accountability." A system that allowed every school to decide what standards to use to provide such information would not allow the public to make meaningful comparisons or "guarantee accountability." For example, the original requirement to provide information on "(b)(1) student achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals," now specifies which test results are to be provided to establish such achievement and progress. This provides a mechanism to allow comparisons between School Accountability Report Cards, while still providing the same basic information required by Proposition 98.

The same is true for the other changes to subdivision (b), as amended by Statutes 1997, chapter 912. For another example, in subdivision (b)(2), the original requirement that the School Accountability Report Card describe "(2) Progress toward reducing dropout rates," was amended to specify that this includes "the one year dropout rate listed in California Basic Education Data System for the schoolsite over the most recent three-year period." Staff finds that these types of clarifications, although not "expressly included" in the original language of the initiative, are "duties that are necessary to implement" or "reasonably within the scope of," "a ballot measure approved by the voters in a statewide or local election." (Gov. Code, § 17556, subd. (f).) Therefore, the Commission finds that even if a higher level of service was successfully established for any of the amendments to Education Code section 33126, subdivision (b) by Statutes 1997, chapter 912, no costs mandated by the state can be found due to the limitations established by Government Code section 17556, subdivision (f).

Even in the absence of Government Code section 17556, subdivision (f), there is a separate and independent ground for finding that the test claim legislation does not impose costs mandated by the state. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two

[219] Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required. The court found:

> Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for purposes of Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.
>
> [¶]…[¶]
>
> [M]erely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Finally, the court concluded (*id.,* at p. 1195):

> Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim legislation].

Likewise here, by amending a few data components in the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." In exercising its jurisdiction to decide test claims, the Commission must follow precedential judicial decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court's published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, "Key Statewide Averages Fiscal Year 2001-02"[220] demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,[221] and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) "No state duty of subvention is triggered where the local agency is

[220] At <http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp> [as of Nov. 1, 2005.]

[221] Over $31 billion for fiscal year 2001-2002.

not required to expend its proceeds of taxes." (*Redevelopment Agency v. Commission on State Mandate*s (1997) 55 Cal.App.4th 976, 987.)

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

> We need not, and do not, determine whether claimants have been legally compelled to participate in the Chacon-Moscone Bilingual Bicultural Education program, or to maintain a related advisory committee. Even if we assume for purposes of analysis that claimants have been legally compelled to participate in the … program, we nevertheless conclude that under the circumstances here presented, *the costs necessarily incurred* in complying with the notice and agenda requirements under that funded program *do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary* notice and agenda related *expenses*. [Emphasis added.]

(*Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, staff concludes that state funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a separate and independent ground, the test claim legislation does not impose costs mandated by the state.

Thus, for the reasons stated above, the Commission finds that Statutes 1997, chapter 912, as it amended Education Code section 33126, does not impose a new program or higher level of service, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Statutes 1997, chapter 912, as it amended Education Code section 33126 does not impose a new program or higher level of service, and does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In addition, pursuant to the express language of Statutes 2005, chapter 677, section 53:

> (b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

Thus both the July 28, 2005 Statement of Decision on School Accountability Report Cards, and the decision adopted pursuant to this reconsideration, shall apply retroactively to January 1, 2005 for purposes of establishing the reimbursement period for the revised parameters and guidelines.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Welfare and Institutions Code Sections 1801 and 1801.5; Statutes 1998, Chapter 267; Test Claim No: 98-TC-13; Directed By Statutes 2004, Chapter 316, Section 3 (Assem. Bill No. 2851), Operative August 25, 2004.	No. 04-RL-9813-07 *Extended Commitment – Youth Authority* 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 July 28, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim reconsideration during a regularly scheduled hearing on July 28, 2005. Lance Christensen and Zlatko Theodorvic, appeared on behalf of the Department of Finance.

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 continue to deny the reconsidered portions of the original test claim decision at the hearing by a unanimous vote of 5-0.

BACKGROUND

Original Decision: *Extended Commitment – Youth Authority*

Extended Commitment – Youth Authority (98-TC-13), was a test claim heard and partially approved by the Commission. The claim, filed on May 10, 1999, by the County of Alameda, alleged a reimbursable state mandate for Welfare and Institutions Code sections 1800, 1801, and 1801.5, as amended by Statutes 1984, chapter 546, and Statutes 1998, chapter 267.

Welfare and Institutions Code section 1800 was first added to the Welfare and Institutions Code by Statutes 1963, chapter 1693. The code section, as it read following amendment by Statutes 1984, chapter 546, follows (amendments indicated in underline and strikeout):

> Whenever the Youthful Offender Parole Board determines that the discharge of a person from the control of the Youth Authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the board, through its chairman, shall request the prosecuting attorney to petition ~~make application to~~ the committing court for an order directing that the person remain subject to the control of the authority beyond that time. The petition ~~application~~ shall be filed at least 90 days before the time of

discharge otherwise required. The petition ~~application~~ shall be accompanied by a written statement of the facts upon which the board bases its opinion that discharge from control of the Youth Authority at the time stated would be physically dangerous to the public, but no such petition ~~application~~ shall be dismissed nor shall an order be denied merely because of technical defects in the application.

The prosecuting attorney shall promptly notify the Youthful Offender Parole Board of a decision not to file a petition.

All of the reimbursable state-mandated activities found in the *Extended Commitment – Youth Authority* Statement of Decision were attributed to Welfare and Institutions Code section 1800, as amended by Statutes 1984, chapter 546, based on the change of wording to "request the prosecuting attorney to petition" from "make application to."

The following findings were made by the Commission in the *Extended Commitment – Youth Authority* Statement of Decision, adopted January 25, 2001:

> Based on the foregoing, the Commission concludes that section 1800 of the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:
>
> - Review the YOPB's [Youthful Offender Parole Board] written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA [California Youth Authority] at the time stated would be physically dangerous to the public;
> - Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
> - Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
> - Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.
>
> The Commission further concludes that costs incurred by counties for indigent representation by public defenders, custody, and transportation are ineligible for reimbursement under section 6, article XIII B of the California Constitution and Government Code section 17514 because these costs resulted from statutes enacted prior to January 1, 1975.

The Commission adopted parameters and guidelines for this test claim at the May 24, 2001 hearing.

Statutes 2004, chapter 316, section 3 (Assembly Bill (AB) 2851), directs the Commission to reconsider the prior final decision in *Extended Commitment - Youth Authority* by January 1, 2006.

Counties' Positions

No comments were received on the reconsideration or draft staff analysis from the original claimants or other interested parties.

State Agency Positions

No comments were received on the reconsideration or draft staff analysis from Department of Finance or any other state agencies.

Legislative Analyst's Office Report

In December 2003, the Legislative Analyst's Office distributed a report entitled *New Mandates: Analysis of Measures Requiring Reimbursement*.[222] This report to the Legislature discusses recommendations related to the *Extended Commitment – Youth Authority* mandate claim at pages 11 - 12, as follows:

> The commission's decision does not identify any provision of Chapter 546 that increases a district attorney's obligation, responsibility, or authority regarding these extended commitments. Instead, the record and the decision indicate that prosecuting district attorneys have had the authority to petition the court in these civil cases since the process to extend the commitment of wards was instituted in 1963 (Welfare and Institutions Code Section 1800). Throughout this period, counties have used this authority to fulfill their duty to protect local public safety. The commission's decision does not identify any provision of Chapter 546 that changes county district attorney discretion or responsibility regarding these cases. Thus, the commission's decision fails in its responsibility to identify a mandate necessitating legislative appropriation.
>
> Accordingly, we recommend the Legislature request the commission to reconsider its Statement of Decision and make any changes necessary to clarify which, if any, activities impose a state-reimbursable mandate.

Following release of this report, AB 2851 ordered the Commission to reconsider the *Extended Commitment – Youth Authority* Statement of Decision.

[222] At <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.pdf> [as of Apr. 18, 2005.]

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[223] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[224] "Its 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."[225] 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.[226] 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.[227]

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.[228] 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.[229] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[230]

---

[223] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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."

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

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

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

[227] *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[231]

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.[232] 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."[233]

Issue 1: What is the scope of the Commission's jurisdiction directed by AB 2851?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that are conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[234]

Since the Commission was created by the Legislature, its powers are limited to those authorized by statute.[235] Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim, and generally grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on AB 2851. Absent AB 2851, the Commission would have no jurisdiction to reconsider any part of the *Extended Commitment – Youth Authority* decision since the original decision was adopted and issued in 2001, well over 30 days ago.

---

[231] *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.

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

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

[234] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347; citing *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[235] Government Code section 17500 et seq.

Thus, the Commission must act within the jurisdiction granted by AB 2851, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.[236] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of AB 2851. Statutes 2004, chapter 316, section 3 (AB 2851), directs the Commission to reconsider the prior final decision in *Extended Commitment -- Youth Authority*, as follows:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:
>
> …
>
> (b) *Extended Commitment, Youth Authority* (No. 98-TC-13; and Chapter 267 of the Statutes of 1998).

Statutes 1984, Chapter 546 (AB 2760).

AB 2851 requires the Commission to reconsider "whether each of the following *statutes* constitutes a reimbursable mandate." The subsequent language names Statutes 1998, chapter 267. However, Statutes 1984, chapter 546, although it was part of the original mandate determination, was not included in the express language of the reconsideration statute. AB 2851 otherwise named with specificity the statute and chapter numbers the Commission was directed to reconsider. "A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed - *expressio unius est exclusio alterius*." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403.)

Another rule of statutory construction provides that when the statutory language is plain, the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][237]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[238] To the extent

---

[236] *Cal. State Restaurant Assn. v. Whitlow*, *supra*, 58 Cal.App.3d at pages 346-347.

[237] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

[238] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[239]

As discussed above, the Commission, as an administrative agency, only has the powers conferred on it, expressly or by implication, by statute or constitution. Therefore, the Commission cannot reconsider its prior decision on Statutes 1984, chapter 546, amending Welfare and Institutions Code sections 1800, 1801, and 1801.5. The reconsideration is limited to the statutory amendments by Statutes 1998, chapter 267.

Reimbursement Period

AB 2851 was urgency legislation, operative August 25, 2004. The legislation does not specify a reimbursement period for any changes to the *Extended Commitment – Youth Authority* parameters and guidelines following the reconsideration of the underlying test claim decision. The courts have established a strong presumption against the retroactive application of statutes, repeatedly finding: "A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so."[240]

There is nothing in the plain language of AB 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, the Commission finds that AB 2851 is not to be applied retroactively, and the period of reimbursement for this reconsideration begins July 1, 2005. Thus, if the prior decision in *Extended Commitment – Youth Authority* were substantively modified, any subsequent changes to the parameters and guidelines would be effective for reimbursement claims filed for the 2005-2006 fiscal year.

Issue 2: Is Statutes 1998, chapter 267 subject to article XIII B, section 6 of the California Constitution?

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must 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.[241] The court has held that only one of these findings is necessary.[242]

The Commission finds that holding extended commitment proceedings for youthful offenders imposes a program within the meaning of article XIII B, section 6 of the California Constitution because it carries out the governmental function of providing a service to the public by providing a legal mechanism to hold a youthful offender beyond his or her release date if the person is determined to continue to be a physical danger to the public.

---

[239] *Estate of Griswald, supra*, 25 Cal.4th at page 911.

[240] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

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

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

However, much of the statutory scheme on extended commitments for youthful offenders was in place prior to 1975, so the analysis must continue to determine if the statute alleged imposes a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6.

Issue 3: Do statutory amendments by Statutes 1998, chapter 267 impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code section 17514?

Welfare and Institutions Code Sections 1801 and 1801.5:

Welfare and Institutions Code section 1801,[243] was added by Statutes 1963, chapter 693. The code section, as amended by Statutes 1998, chapter 267, follows:

> (a) If a petition is filed with the court for an order as provided in Section 1800, and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross examine experts or other witnesses upon whose information, opinion or testimony the petition is based. The court shall inform the person named in the petition of his or her right of process to compel attendance or [sic] relevant witnesses and the production of relevant evidence.[244] When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.
>
> The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.
>
> (b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines that there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.[245]

---

[243] Unless otherwise noted, all references are to the Welfare and Institutions Code.

[244] Typographical error corrected by Statutes 1999, chapter 83, code maintenance statute.

[245] As last amended by Statutes 1984, chapter 546, the section read:

Prior law required the court to hold a full evidentiary hearing to determine whether the youthful offender continued to be dangerous to the public. If the determination was that the person remained a danger, then the court continued to the provisions of section 1801.5, which provided for a full jury trial upon request of the person, or by their parent or guardian. The 1998 amendment to section 1801 reworded the statute, but the substantive change was to specify the standard of proof required for the hearing.

In the prior version of section 1801, the standard of proof required at the initial hearing was not explicit. The 1998 amendment now provides for a preliminary *probable cause* hearing on the issue of dangerousness. According to bill analyses for Senate Bill No. 2187 (Stats. 1998, ch. 267), the standard of proof used varied by court, with some requiring a higher, *reasonable doubt*, standard at the section 1801 hearing stage. The Senate Rules Committee analysis from May 19, 1998, provides the following history:

> The sponsor of the bill submits that "a disjointed series of amendments and judicial interpretations" has caused these provisions to "evolve in such a way as to require an unparalleled redundancy by which a 'defendant' is now, arguably, entitled to two consecutive trials at which the people must twice establish the same elements beyond a reasonable doubt."

In addition, the Appropriations Committee Fiscal Summary from May 18, 1998, stated:

> This bill makes consistent the standards to be used in these procedures since it currently varies by court. By requiring only a preponderance of evidence in the initial hearing, there may actually be some minor cost savings to the courts since some courts are now requiring proof beyond a reasonable doubt.

> If a petition is filed with the court for an order as provided in Section 1800, the court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the application, and shall afford the person an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.
>
> If after a full hearing the court is of the opinion that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality, the court shall order the Youth Authority to continue the treatment of the person. If the court is of the opinion that discharge of the person from continued control of the authority would not be physically dangerous to the public, the court shall order the person to be discharged from control of the authority.

For background, Statutes 1984, chapter 546 substituted the words "a petition is filed with" for "the board applies to" in the first sentence, and substituted gender-neutral language throughout. Prior to 1984, the section was not amended since it was enacted in 1963.

Next, the Commission reviews the 1998 amendment to Welfare and Institutions Code section 1801.5, which was originally added to the code by Statutes 1971, chapter 1337. Section 1801.5, as amended by Statutes 1998, chapter 267, follows:

> If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.[246]

The substantive amendments to section 1801.5 are to the first sentence. Prior law required the court to hold an initial hearing under section 1801. If the court held that the person should be returned to the California Youth Authority, the person, or their parent or guardian, was permitted to file a written demand for a jury trial under section 1801.5. The 1998 amendment requires a jury trial be held following the preliminary hearing finding probable cause, unless the person

---

[246] As last amended by Statutes 1984, chapter 546, the section read:

> If the person is ordered returned to the Youth Authority following a hearing by the court, the person, or his or her parent or guardian on the person's behalf, may, within 10 days after the making of such order, file a written demand that the question of whether he or she is physically dangerous to the public be tried by a jury in the superior court of the county in which he or she was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the question: Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in such trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. The trial shall require a unanimous jury verdict, employing the standard of proof beyond a reasonable doubt.

For background, Statutes 1984, chapter 546 substituted the final two sentences for the former concluding sentence: "The trial shall be had as provided by law for the trial of civil cases and shall require a verdict by at least three-fourths of the jury," and used gender-neutral language throughout. Prior to 1984, the section was not amended since it was enacted in 1971.

affirmatively waives the trial. The remainder of the statute, regarding the conduct of the jury trial and standard of proof, is substantively identical to prior law.

In the original test claim filing, the claimant pled Statutes 1998, chapter 267 as it amended Welfare and Institutions Code sections 1801 and 1801.5. However, there are no new activities specifically attributed to these amendments in the test claim allegations.

The courts have long required that the extended commitment scheme provide both due process and equal protection of the law. Under article XIII B, section 6 of the California Constitution, and Government Code section 17556, subdivision (b), the Commission cannot make a finding of a reimbursable state-mandated program if: "The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts." The California Supreme Court decision, *In re Gary W.* (1971) 5 Cal.3d 296, first affirmed the right to a jury trial under Welfare and Institutions Code sections 1800 – 1803. Later, in *People v. Superior Court (Vernal D.)* (1983) 142 Cal.App.3d 29, 35-37, the appellate court found:

> Unquestionably, equal protection compels a unanimous verdict for the involuntary commitment of youthful offenders as well. No distinctions are evident which would justify disparate treatment of youthful offenders, committed to the California Youth Authority, who are denied release based on a finding that they are dangerous to themselves or others. Both equal protection and due process obviously compel the requirement of a unanimous jury verdict. The courts have soundly rejected arguments that these proceedings are civil in nature and therefore entitled to different treatment. The consequence of the proceeding, involuntary incarceration, triggers the full panoply of due process protections. [FN3]
>
> > FN3. Although Vernal D. does not discuss the standard of proof which should be applied in these proceedings, for the guidance of the trial court we explain that in order to comply with the requirements of the due process clauses of the California and federal Constitutions, extended detention under section 1800 must be justified by proof beyond a reasonable doubt. Section 1801.5 implies, in providing that "[t]he trial shall be had as provided by law for the trial of civil cases," that proof by a preponderance of the evidence is satisfactory. It is now well established in California that so drastic an impairment of liberty as is suffered by involuntary commitment may not be supported on any lesser standard than proof beyond a reasonable doubt. (*People v. Feagley, supra,* 14 Cal.3d 338, 345, 121 Cal.Rptr. 509, 535 P.2d 373; *People v. Burnick* (1975) 14 Cal.3d 306, 310, 121 Cal.Rptr. 488, 535 P.2d 352.)
>
> Since the decision in *Gary W.*, the [California] Supreme Court has held that both mentally disordered sex offenders (*People v. Feagley, supra,* 14 Cal.3d 338, 121 Cal.Rptr. 509, 535 P.2d 373), and narcotics addicts (*People v. Thomas, supra,* 19 Cal.3d 630, 139 Cal.Rptr. 594, 566 P.2d 228), are entitled to a unanimous verdict prior to involuntary commitment. Similarly, if for no other reason than that the Supreme Court has previously determined that no constitutional distinction exists among those committees, dangerous youthful offenders are entitled to the same constitutional protections.

> Let a peremptory writ of mandate issue directing the trial court to conduct a hearing on petitioner's application to extend Youth Authority control over Vernal D.; *unless waived, Vernal D. is entitled to a trial by jury on the issue of dangerousness; his dangerousness must be established by proof beyond a reasonable doubt; and he may not be involuntarily committed on anything less than a unanimous verdict of that jury*. [Emphasis added.]

The California Supreme Court discussed the jury trial and unanimous verdict standard, and the Legislature's subsequent response to the *Vernal D.* holding, as part of the recent decision, *In re Howard N.* (2005) 35 Cal.4th 117, 134:

> The Legislature promptly responded by amending the extended detention scheme to provide for proof beyond a reasonable doubt and a unanimous verdict. (Assem. Com. on Crim. Law and Public Safety, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, p. 1 ["The purpose of the bill is to codify judicially mandated due process safeguards in the statute to insure that extension proceedings are conducted properly. (See *People v. Superior Court* (*Vernal D.*) 142 Cal.App.3d 29, [190 Cal.Rptr. 721].) ... This is a rather rare proceeding and it can't be assumed most prosecutors are familiar with it. Therefore, it is important to correct the statutes which currently inaccurately reflect what procedural safeguards are necessary"]; Sen. Com. on Judiciary, analysis of Assem. Bill No. 2760 (1983-1984 Reg. Sess.) as introduced Feb. 7, 1984, pp. 1-2 ["The statute now requires that three-fourths of the members of the jury agree by a preponderance of evidence that the ward is dangerous. An appellate court decision, however, has held that due process and equal protection require a unanimous jury verdict beyond a reasonable doubt. [¶] This bill would codify these procedural requirements.... [¶] The purpose of this bill is to conform statutory and case law"]; see also Assemblyman Rusty Areias, letter to Governor Deukmejian re Assem. Bill No. 2760, July 9, 1984, p. 1 ["AB 2760 incorporates safeguards necessary to meet constitutional requirements, thereby preserving a procedure that is vital to protect the public from dangerous, mentally-unbalanced youthful offenders"].)

Regarding the 1998 amendments to section 1801, clarifying that the standard of proof for the preliminary hearing is probable cause, and not reasonable doubt, does not impose a higher level of service on counties. As discussed in the bill history for Statutes 1998, chapter 267, if anything the change served to reduce the workload for prosecuting attorneys. As for the amendments to section 1801.5, the Commission finds that there is no meaningful difference in a statutory scheme that provides a jury trial upon request, following a preliminary hearing finding for continued detention, or one that provides a jury trial automatically, unless waived. In addition, the revised wording more closely complies with the spirit of court rulings granting detainees full due process protections of a trial by jury before the State can hold the individual beyond the normal statutory time limits for youth offenders.

Therefore, the Commission finds that Welfare and Institutions Code sections 1801 and 1801.5, as amended by Statutes 1998, chapter 267, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514.

CONCLUSION

The Commission concludes that Welfare and Institutions Code sections 1801 and 1801.5, as amended by Statutes 1998, chapter 267, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514.
In the case of reimbursable state-mandated activities from Statutes 1984, chapter 546, the Commission does not have statutory authority to rehear that portion of the original decision; therefore those findings continue to stand, and no parameters and guidelines amendments are required.[247]

[247] The original Statement of Decision found that Welfare and Institutions Code section 1800, as amended by Statutes 1984, chapter 546 (AB 2760):

> imposes a reimbursable state-mandated program upon counties within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities performed by the prosecuting attorney:
>
> - Review the YOPB's written statement of facts upon which the YOPB bases its opinion that discharge from control of the CYA at the time stated would be physically dangerous to the public;
> - Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
> - Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
> - Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.