Case No. S262663

SUPREME COURT OF CALIFORNIA

COAST COMMUNITY COLLEGE DISTRICT, et al.

Plaintiffs and Appellants,

vs.

COMMISSION ON STATE MANADATES,

Defendant and Respondent.

DEPARTMENT OF FINANCE,

Real Party in Interest and Respondent.

Third Appellate District, Case No. C080349
Sacramento County Superior Court,
Court Case No. 34-2014-80001842CUWMGDS
The Honorable Christopher E. Krueger, Judge

MOTION FOR JUDICIAL NOTICE OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF NICHOLAS CLAIR

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NOTICE OF MOTION AND MOTION

Pursuant to Evidence Code sections 452 and 459, and Rule 8.252 of the California Rules of Court, *Amicus Curia* California School Boards Association's Education Legal Alliance ("*Amicus Curiae*"), hereby move this Court to take judicial notice of:

1. Commission on State Mandates, Statement of Decision, *Hepatitis Presumption (K-14) Test Claim*, Case No. 02-TC-17 (Sept. 27, 2007), a true and correct copy of which is attached hereto as Exhibit "1" and incorporated by reference;

2. Commission on State Mandates, Statement of Decision, *Surplus Property Advisory Committees Test Claim*, Case No. 02-TC-36 (Sept. 27, 2007), a true and correct copy of which is attached hereto as Exhibit "2" and incorporated by reference; and

3. Commission on State Mandates, Statement of Decision, *School Bus Safety III Test Claim*, Case No. 03-TC-01 (Sept. 27, 2007), a true and correct copy of which is attached hereto as Exhibit "3" and incorporated by reference.

Date: May 17, 2021

Respectfully submitted,

LOZANO SMITH

/s/ Sloan R. Simmons
SLOAN R. SIMMONS
NICHOLAS J. CLAIR
Attorneys for *Amicus Curiae*
CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The issues on appeal in this case relate to the State's obligation to provide reimbursement ("subvention") to educational agencies for state mandated new programs or increased levels of service pursuant to California Constitution Article XIII B, section 6. More specifically, the case revolves upon whether this Court's test set forth in *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727 (*"Kern"*), *allows* the Commission on State Mandates to find a mandate does not exist where the Legislature conditions the receipt of existing base State education funding on which education agencies depend for their operation.

ARGUMENT

THE COURT SHOULD TAKE JUDICIAL NOTICE OF PRIOR AND CURRENT PUBLIC RECORDS RELATED TO SUCH LEGISLATION.

Pursuant to Evidence Code section 459, this Court may take judicial notice of those matters described in Evidence Code section 452. (Evid. Code, § 459, subd. (a).) When making such a determination, this Court determines whether the matter of which notice is requested is of substantial consequence to the determination of the action. (*Id.*, § 459, subd. (c).)

In the instant appeal, the *Amicus Curiae* request that this Court take judicial notice of three publicly accessible official Commission on State Mandates' records probative to this Court's consideration of the case. The *Amicus Curiae* requests judicial notice of Test Claim Statements of Decision of the Commission of State Mandates ("Commission"), all of which relate to the central issue in this case with respect to the Commission' application and interpretation of *Kern*. (See Exs. 1-3.)

Official acts of the executive department of the State of California for which the District requests judicial notice are relevant and are of substantial consequence to the determination of issues presented before this Court. (See Evid. Code §§ 452, subd. (c), 459.) The materials provide this Court with valuable information regarding the history of the Commission's interpretation and application of *Kern*, as well as the practical .

Courts have repeatedly recognized the propriety of taking judicial notice of decisions of California administrative agencies. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484 [taking judicial notice of decision of Department of Managed Health Care]; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 698, fn. 12 [taking judicial notice of decision of the State Water Resources Control Board]; *People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1143, fn. 4 [taking judicial notice of decision of Public Utilities Commission].)

Exhibits 1, 2, and 3 are Commission on State Mandate Test Claim decisions on test claims in which the Commission interprets and applies *Kern* to test claims submitted by school districts. These materials help provide context as to the how the Commission has interpreted and applied *Kern*, the practical consequences of such application, and the issues at stake in this case.

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For all of the foregoing reasons and for the reasons set forth in the accompanying Declaration of Nicholas Clair, the *Amicus Curiae* respectfully requests, pursuant to Evidence Code sections 452 and 459, that this Court take judicial notice of Exhibits 1, 2 and 3, attached hereto.

Date: May 17, 2017

Respectfully submitted,

LOZANO SMITH

/s/ Sloan R. Simmons

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CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, ASSOCIATION OF CALIFORNIA WATER AGENCIES, and CALIFORNIA ASSOCIATION OF SANITATION AGENCIES

DECLARATION OF NICHOLAS CLAIR IN SUPPORT OF *AMICUS CURIAE'S* MOTION FOR JUDICIAL NOTICE

I, Nicholas J. Clair, declare as follows:

1. I am an attorney duly licensed to practice in all courts within the state of California, an associate with Lozano Smith, and one of the attorneys primarily responsible for representing the *Amici* in this appeal and as such, have personal knowledge of the facts stated in this declaration and if called as a witness I could and would competently testify thereto under oath. This Declaration is being submitted in support of *Amici's* Motion for Judicial Notice.

2. I obtained Exhibit 1 from the official website for the Commission of State Mandates at the following link, https://www.csm.ca.gov/decisions/157.pdf. I accessed Exhibit 1 on May 14, 2021.

3. I obtained Exhibit 2 from the official website for the Commission of State Mandates at the following link, https://www.csm.ca.gov/decisions/doc37.pdf. I accessed Exhibit 2 on May 14, 2021.

4. I obtained Exhibit 3 from the official website for the Commission of State Mandates at the following link, https://www.csm.ca.gov/decisions/504.pdf. I accessed Exhibit 2 on May 14, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17th day of May 2021, in Sacramento, California.

/s/ Nicholas J. Clair
NICHOLAS J. CLAIR

PROOF OF SERVICE

I, Rachelle Esquivel, am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is One Capitol Mall, Suite 640, Sacramento, CA 95814.

On May 17, 2021, I served the attached:

MOTION FOR JUDICIAL NOTICE OF AMICUS CURIAE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF NICHOLAS CLAIR

on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope addressed as follows and I caused delivery to be made by the mode of service indicated below:

Attorneys for Appellants San Coast Community College District et al.: Christian M. Keiner William Benjamin Tunick Dannis Woliver Kelley 555 Capitol Mall, Suite 645 Sacramento, CA 95814	**Attorneys for Respondent Commission on State Mandates:** Camille Shelton Juliana Francis Gmur Commission on State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814
Attorneys for Real Party in Interest Department of Finance: P. Patty Li Samuel Thomas Harbourt Office of the Attorney General 455 Golden Gate Avenue, Ste. 11000 San Francisco, CA 94102	**Clerk of the Court:** Hon. Christopher E. Krueger Superior Court of California County of Sacramento 720 9th Street Sacramento, CA 95814

[X] (***Regular U.S. Mail***) on Superior Court of California, County of Sacramento, in said action in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Sacramento.

[X] (***By Electronic Filing Service Provider***) By transmitting a true and correct copy thereof by electronic filing service provider (EFSP),

True Filing, to the interested party(s) or their attorney of record to said action at the e-mail address(es) of record and contained within the relevant EFSP database listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication from the EFSP that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 17, 2021, at Sacramento, California.

/s/ Rachelle Esquivel
Rachelle Esquivel

Coast Community College District, et al. v. Commission on State Mandates Supreme Court of California, Case No. S262663

***AMICUS CURIAE'S* MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF NICHOLAS CLAIR**

EXHIBIT 1

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Labor Code Section 3212.8; Statutes 2000, Chapter 490, Statutes 2001; Chapter 833 Filed on February 27, 2003, By Santa Monica Community College District, Claimant.	**Case No.**: 02-TC-17 *Hepatitis Presumption (K-14)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted on September 27, 2007)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on September 27, 2007. Mr. Keith Petersen represented and appeared for the claimant. Ms. Carla Castañeda and Ms. Donna Ferebee 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 7 to 0 to deny this test claim.

Summary of Findings

This test claim was filed on February 27, 2003, by Santa Monica Community College District regarding a statute that addresses an evidentiary presumption in workers' compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases. The test claim statute is Labor Code section 3212.8.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." This definition of "injury" includes hepatitis and any blood-borne infectious disease.

The test claim statute, provides an evidentiary presumption to certain members of school district police departments that develop or manifest hepatitis and other blood-borne infectious diseases during the period of employment. This evidentiary presumption shifts the burden of proof to the

public school district to show that the hepatitis did not arise out of or in the course of the police officer's employment with the district.

The Commission finds that the express language of Labor Code section 3212.8 does not impose any state-mandated requirements on school districts. Rather, the decision to dispute this type of workers' compensation claim and prove that the injury did not arise out of and in the course of employment remains entirely with the school district. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.

The Commission concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833, is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6.

BACKGROUND

This test claim addresses an evidentiary presumption in workers' compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.[1] Although the workers' compensation law must be "liberally construed" in favor of the injured employee, the burden is normally on the employee to show proximate cause by a preponderance of the evidence.[2] If liability is established, the employee is entitled to compensation for the full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as defined and calculated by the Labor Code.[3]

As early as 1937, the Legislature began to ease the burden of proof for purposes of liability for certain public employees that provide "vital and hazardous services" by establishing a presumption of industrial causation; that the injury arose out of and in the course of employment.[4] The presumptions have the effect of shifting to the employer the burden of proof as to the nonexistence of the presumed fact. Thus, the employer has the burden to prove that the employee's injury did not arise out of or in the course of employment.[5]

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." This definition of "injury" includes hepatitis and any blood-borne infectious disease.

Test Claim Statute

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[1] Labor Code section 3600, subdivisions (a)(2) and (3).

[2] Labor Code sections 3202, 3202.5.

[3] Labor Code sections 4451, et seq.

[4] *Zipton v. Workers' Comp. Appeals* Bd. (1990) 218 Cal.App.3d 980, 987.

[5] *Id*. at page 988, footnote 4.

Labor Code section 3212.8 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes hepatitis for certain members of police, sheriff's, and fire departments when any part of the hepatitis develops or manifests itself during the period of employment. In such cases, the hepatitis shall be presumed to arise out of and in the course of employment.[6] This presumption may be rebutted, however, the employer cannot rebut this presumption by attributing the hepatitis to any disease existing prior to its development or manifestation.[7] In 2001, Labor Code section 3212.8 was amended by replacing "hepatitis" with "blood-borne infectious disease," and thus, providing a rebuttable presumption for more blood related "injuries."[8]

Related Test Claims and Litigation

Although not having precedential effect, the Second District Court of Appeal, in an unpublished decision for *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, upheld the Commission's decisions to deny related workers' compensation test claims entitled *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19), *Lower Back Injury Presumption for Law Enforcement* (01-TC-25), and *Skin Cancer Presumption for Lifeguards* (01-TC-27), which addressed the issues raised in the current test claim.

The test claim entitled *Cancer Presumption for Law Enforcement and Firefighters*, addressed Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, and Statutes 2000, chapter 887. Labor Code section 3212.1 provides a rebuttable presumption of industrial causation to certain law enforcement officers and firefighters that develop cancer, including leukemia, during the course of employment. Under the 1999 amendment to section 3212.1, the employee need only show that he or she was exposed to a known carcinogen while in the service of the employer. The employer still has the right to dispute the employee's claim as it did under prior law. But when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer is shifted to the employer. The 2000 amendment to Labor Code section 3212.1 extended the cancer presumption to peace officers defined in Penal Code section 830.37, subdivisions (a) and (b); peace officers that are members of an arson-investigating unit or are otherwise employed to enforce the laws relating to fire prevention or fire suppression.

The test claim entitled *Lower Back Injury Presumption for Law Enforcement*, addressed Labor Code section 3213.2, as added by Statutes 2001, chapter 834. Labor Code section 3213.2 provides a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury.

The test claim entitled *Skin Cancer Presumption for Lifeguards*, addressed Labor Code section 3212.11, as added by Statutes 2001, chapter 846. Labor Code section 3212.11 provides a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment.

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[6] Statutes 2000, chapter 490.

[7] *Ibid*.

[8] Statutes 2001, chapter 833.

The Commission denied each test claim finding that pursuant to existing case law interpreting article XIII B, section 6, the statutes do not mandate new programs or higher levels of service on local agencies.[9]

On December 22, 2006, the Second District Court of Appeal issued its unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*, affirming the Commission's decision that the 1999, 2000, and 2001 additions and amendments to Labor Code section 3212.1, 3212.11, and 3213.2, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[10] Final judgment in the case was entered on May 22, 2007.[11] In its decision affirming the Commission's finding that the test claim statutes did not constitute reimbursable state-mandated programs, the Second District Court of Appeal found:

- Workers' compensation is not a program administered by local governments as a service to the public. As a result, the test claim statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test claim statutes' presumptions will impose increased workers' compensation costs solely on local entities.
- Costs alone do not equate to a higher level of service within the meaning of article XIII B, section 6. The service provided by the counties represented by CSAC-EIA and the city, workers' compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an increased level of service to the public within the meaning of article XIII B, section 6.

Claimant's Position

Claimant, Santa Monica Community College District, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant asserts that it is entitled to reimbursement for costs incurred as a result of the following activities required by the test claim statute:

- Develop and periodically revise polices and procedures for the handling of workers' compensation claims related to the contraction of hepatitis or blood-borne infectious diseases.
- Payment of additional costs of claims caused by the presumption of industrial causation of hepatitis or blood-borne infectious diseases.
- Payment of increased workers' compensation insurance coverage in lieu of additional costs of claims caused by the presumption of industrial causation.

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[9] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern High School Dist.*); *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[10] Exhibit E, Supporting Documentation, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Second District Court of Appeal, Case No. B188169 (Unpubl. Opn.).

[11] Exhibit E, Supporting Documentation, Judgment.

- Physical examinations of community college district police officers prior to employment.
- Training of police officer employees to prevent contraction of hepatitis or blood-borne infectious disease on the job.[12]

Department of Finance's (Finance) Position

Finance filed comments on May 12. 2003,[13] arguing that the plain language of the test claim statute does not mandate the following activities:

- Increased workload associated with the development and periodic revision of policies and procedures for the handling of workers' compensation claims related to the contraction of blood-borne infectious disease.
- Increased requirements for physical examinations prior to employment.
- Increased training to prevent the contraction of blood-borne infectious disease.
- Increased workers' compensation insurance coverage for blood-borne infectious diseases.

As a result, Finance contends that claimants are not entitled to reimbursement for these activities. However, Finance finds that the test claim statute may impose a reimbursable state-mandated program requiring:

- Increased workers' compensation claims for blood-borne infectious diseases.

Thus, claimant may be entitled to reimbursement for this activity under article XIII B, section 6 of the California Constitution.

Commission Findings

The courts have found that article XIII B, section 6 of the California Constitution[14] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[15] "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

[12] Exhibit A, p. 109-110.

[13] Exhibit B.

[14] California Constitution, 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."

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

impose."[16] 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.[17] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[18]

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.[19] 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.[20] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[21]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[22]

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.[23] 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."[24]

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

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

[18] *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*).

[19] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

[21] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877.

[22] *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.

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

[24] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Does Labor Code section 3212.8, as added and amended in 2000, and 2001, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

The case law is clear that even though a statute is addressed only to local government and imposes new costs on them, the statute may not constitute a reimbursable state-mandated program under article XIII B, section 6.[25] It is well-established that school districts and local agencies are not entitled to reimbursement for all increased costs, but only those resulting from a new program or higher level of service mandated by the state.[26] The costs identified by claimant for the test claim statute are the additional costs of developing and revising polices and procedures for the handling of workers' compensation claims involving hepatitis and blood-borne infectious diseases claims, the additional costs of handling these claims, the cost of increased workers' compensation insurance coverage for these types of claims in lieu of costs to handle these claims, costs of pre-employment physical examinations, and the cost of training peace officer employees to prevent contraction of hepatitis or blood-borne infectious diseases.

However, Labor Code section 3212.8, as added and amended in 2000, and 2001,[27] does not mandate school districts to incur these costs. The statute simply *creates* the presumption of industrial causation for the peace officer employee, but does not require a school district to provide a new or additional service to the public. The relevant language in Labor Code section 3212.8, as added in 2000 states that:

> The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and *may* be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. (Emphasis added.)

The 2001 amendment merely replaces "hepatitis" with "blood-borne infectious diseases" and makes no other substantive change. This statute authorizes, but does not require, school districts that employ police officers to dispute the claims of injured officers. Thus, it is the decision made by the school district to dispute the claim that triggers any litigation costs incurred. Litigation costs are not mandated by the state.[28]

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[25] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1190; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

[26] *Kern High School Dist., supra,* 30 Cal.4th 727, 735-736.

[27] Statutes 2000, chapter 490, and Statutes 2001, chapter 833.

[28] *Kern High School Dist., supra,* 30 Cal.4th 727, 742-743. Furthermore, there is no evidence that counties and cities are practically compelled to dispute the claims. The statutes do not impose a substantial penalty for not disputing the claim. (*Kern High School Dist., supra,* 30 Cal.4th at p. 751.)

In addition, the Labor Code section 3212.8, on its face, does not mandate school districts to pay workers' compensation benefits to injured employees. Even if the statute required the payment of increased benefits, the payment of benefits to employees would still have to constitute a new program or higher level of service. School districts, however, have had the responsibility to pay workers' compensation benefits for "any injury or disease arising out of employment" since 1971.[29] Labor Code section 4850 has further provided special compensation benefits to injured peace officers and firefighters since 1983, well before the enactment of the test claim statute. Thus, the payment of employee benefits is not new and has not been shifted to school districts from the state.

Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.[30] Rather, the California Supreme Court and other courts of appeal have determined that the following programs required under law are not administered by local government to provide a service to the public and, thus, reimbursement under article XIII B, section 6 of the California Constitution is not required: providing workers' compensation benefits to public employees; providing unemployment compensation protection to public employees; increasing Public Employment Retirement System (PERS) benefits to retired public employees; and paying death benefits to local safety officers under the PERS and workers' compensation systems.[31]

More specifically within the context of workers' compensation, the Supreme Court decided *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" pursuant to article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies.[32] Although the Court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the Court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."

> Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in

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[29] Labor Code section 3208, as last amended in 1971. See also, Labor code section 3300, defining "employer" for purposes of workers' compensation as "Each county, city, district, and all public and quasi public corporations and public agencies therein," and Education Code sections 44043 and 87042.

[30] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877.

[31] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57; *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67; and *City of Richmond v. Commission on State Mandates, supra*, 64 Cal.App.4th 1190, 1195.

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

> conjunction with the predecessor phrase "new program" to give it meaning. *Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."*[33]

The Court continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public*.[34]

Applying these principles, the Court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The Court stated the following:

> Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers … In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program … Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.[35]

Moreover, in 2004, the California Supreme Court, in *San Diego Unified School Dist*., reaffirmed the conclusion that simply because a statute, which establishes a public employee benefit program, may increase the costs to the employer, the statute does not "in any tangible manner increase the level of service provided by those employers to the public" within the meaning of article XIII B, section 6.[36]

These principles apply even though the presumption is granted uniquely to public safety employees. In the Second District Court of Appeal case of *City of Anaheim*, the city sought reimbursement for costs incurred as a result of a statute that temporarily increased retirement benefits to public employees. The city argued that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents and entities."[37] The court held that reimbursement was not required because the statute did not impose any state-mandated activities on the city and the PERS program is not a

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[33] *Ibid,* emphasis added.

[34] *Id*. at pages 56-57, emphasis added.

[35] *Id.* at pages 57-58, fn. omitted.

[36] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[37] *City of Anaheim, supra*, 189 Cal.App.3d at pp. 1483-1484.

program administered by local agencies as a service to the public.[38] The court reasoned as follows:

> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending … and preclude a shift of financial responsibility for carrying out governmental functions from the state to local agencies. … Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public.[39]

The reasoning in *City of Anaheim* applies here. Simply because the test claim statute applies uniquely to local governments and school districts does not mean that reimbursement is required under article XIII B, section 6.[40]

Accordingly, the Commission finds that Labor Code section 3212.8, as added and amended in 2000 and 2001, does not mandate a new program or higher level of service and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

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[38] *Id*. at page 1484.

[39] *Ibid*.

[40] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877, fn. 12; *County of Los Angeles, supra*, 110 Cal.App.4th at page 1190; *City of Richmond, supra*, 64 Cal.App.4th at page 1197.

Coast Community College District, et al. v. Commission on State Mandates Supreme Court of California, Case No. S262663

***AMICUS CURIAE'S* MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF NICHOLAS CLAIR**

EXHIBIT 2

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 17387, 17388, 17389, 17390, 17391 Statutes 1982, Chapter 689, Statutes 1984, Chapter 584, Statutes 1986, Chapter 1124, Statutes 1987, Chapter 655, Statutes 1996, Chapter 277 Filed on June 25, 2003 by Clovis Unified School District, Claimant	Case Nos.: 02-TC-36 *Surplus Property Advisory Committees* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on January 30, 2009*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on January 30, 2009. Art Palkowitz appeared on behalf of claimant Clovis Unified School District. Susan Geanacou 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 deny the test claim at the hearing by a vote of 5-1.

Summary of Findings

The Commission finds that the test claim statutes (Ed. Code, §§ 17387, 17388, 17389, 17390, 17391; Statutes 1982, chapter 689, Statutes 1984, chapter 584, Statutes 1986, chapter 1124, Statutes 1987, chapter 655, Statutes 1996, chapter 277) are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Because there is no legal or practical compulsion to designate as surplus or transfer school district property, neither formation of the advisory committee (§ 17388), nor its activities (§ 17390), are state mandates imposed on a school district. As an alternative ground for denial, the Commission finds that section 17388 is not a new program or higher level of service because a statute provided for the formation of the advisory committee before Statutes 1982, chapter 689, the earliest test claim statute pled by claimant.

BACKGROUND

The test claim alleges a state-mandate for school districts to appoint, supervise, and consult with a surplus property advisory committee to assist in the adoption and implementation of policies and procedures governing the use or disposition of excess school property.

Test Claim Statutes

The intent behind the test claim statutes is expressed by the Legislature as follows:

> It is the intent of the Legislature that leases entered into pursuant to this chapter provide for community involvement by attendance area at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation.
>
> It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires. (Ed. Code, § 17387.)[1]

The original 1976 legislation (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.),[2] in addition to creating the advisory committee, repealed a prohibition against joint occupancy of school

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[1] The original legislative intent language (Stats. 1976, ch. 606 & Stats. 1977, ch. 36)) stated: "(a) It is the intent of the Legislature that school districts be authorized under specified procedures to make vacant classrooms in operating schools available for rent or lease to other school districts, educational agencies, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses and individuals. This will place students in close relationship to the world of work, thus facilitating career education opportunities.

(b) It is the intent of the Legislature that priority in leasing or renting vacant classroom space be given to educational agencies, particularly those conducting special education programs. It is the intent of the Legislature that such procedures provide for community involvement by attendance area and at the district level. This community involvement should facilitate making the best possible judgments about the use of excess school facilities in each individual situation. It is the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires." (Former Ed. Code § 39384, Stats. 1977, ch. 36, § 448.)

[2] The test claim statutes were first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.) but were not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010). They were enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and were amended in 1980 (Stats. 1980, ch. 1354).

As pled by claimant, the test claim statutes were moved (to former §§ 39295 et seq.) and amended again in 1982 (Stats. 1982, ch. 689) and amended again by Statutes 1984, chapter 584, Statutes 1986, chapter 1124, and Statutes 1987, chapter 655. They were moved to their present location (§§ 17387 et seq.) in 1996 (Stats. 1996, ch. 277).

buildings used for classroom purposes. The intent of the bill was to help districts offset revenue losses due to declining enrollment. The revenue from renting unused facilities could be used to supplement the school districts' regular educational program.[3]

The test claim statute that creates the advisory committee has changed very little since its first enactment.[4] It authorizes the school district to appoint a district advisory committee to help develop "districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes." The school district is required to appoint the advisory committee "prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days."[5]

The advisory committee has seven to 11 members that represent the ethnic, age-group, and socioeconomic composition of the district, as well as the business community, landowners or renters, teachers, administrators, parents, and persons with expertise in specified areas (§ 17389).[6]

According to section 17390, the advisory committee shall perform the following duties:

> (a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.
> (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
> (c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.
> (d) Make a final determination of limits of tolerance of use of space and real property.
> (e) Forward to the district governing board a report recommending uses of surplus space and real property.

Section 17391 states that the "governing board may elect not to appoint an advisory committee in the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district."

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[3] Assembly Office of Research, Analysis of Assembly Bill No. 2882 (1975-1976 Reg. Sess.) as amended June 9, 1976 (concurrence in Senate amendments).

[4] Education Code section 17388. The word "sale" was amended out of the 1980 version (Stats. 1980, ch. 1354, former Ed. Code, § 39384 et seq.) but was amended back in by Statutes 1982, chapter 689.

[5] *Ibid.*

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

The Advisory Committee in other Statutes

In addition to appointment of the advisory committee for the purpose stated in the test claim statutes ("prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days," § 17388) the committee may be used in acquiring property. Section 17211 provides:

> Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the **district's advisory committee established pursuant to Section 17388** to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing. [Emphasis added.]

Additionally, a district governing board that seeks to sell or lease surplus real property may first offer the property to a "contracting agency" (§ 17458), which is an entity that is authorized to establish, maintain, or operate services pursuant to the Child Care and Development Services Act. (See § 8200 et seq., including the definition of "contracting agency" in § 8208, subd. (b).) Specified conditions must be met in order to offer the property under the Act, including hearings by the advisory committee: "No sale or lease of the real property of any school district, as authorized under subdivision (a), may occur until the school district advisory committee has held hearings pursuant to **subdivision (c) of Section 17390.**" (§ 17458, subd. (b)), emphasis added.)

School-District Surplus Property Law

The test claim statutes apply only to disposal of surplus or "excess real property"[7] so a discussion of school district surplus property law is warranted.

Generally, school district governing boards have power to sell or lease "any real property belonging to the school district … which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession." (§ 17455.)

In addition to using surplus property for childcare facilities discussed above (§ 17458), the governing board may sell surplus property for less than fair market value to a park district, city or county for recreational purposes or open-space purposes under certain conditions (§ 17230).[8]

Most transfers of school-district surplus property fall under the Naylor Act,[9] which governs offers to sell or lease schoolsites[10] to public agencies ("Notwithstanding Section 54222 of the

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[7] Education Code section 17388.

[8] Section 17230 states that it is in addition to requirements placed on school districts pursuant to Section 54222 of the Government Code, which requires making written offers to specified government entities when selling surplus land. The entities to which the offers are made depend on the intended or suitable purpose for the land.

[9] Education Code sections 17485-17500. For the Supreme Court's summary and interpretation of the Naylor Act, see *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921.

Government Code").[11] The Act also governs retention of part of a schoolsite, sales price or rate of lease, public agencies buying or leasing the land, maintenance by public agencies, uses of the land, reacquisition by the school district, and limitations on the right of acquisition or lease.

The legislative intent of the Naylor Act is "to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes."[12] In accordance with this intent, the Naylor Act applies to schoolsites in which all or part of the land is used for a school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes, and has been used for one of these purposes for at least eight years before the governing board decides to sell or lease the schoolsite (§ 17486). The Act also applies if no other available publicly owned land in the vicinity of the schoolsite would be adequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes, as determined by the purchasing or leasing public agency (*Ibid).*

School districts with more than 400,000 pupils in average daily attendance are not included in the Naylor Act (§ 17500), and it does not apply if other public agencies do not wish to purchase the surplus land (§ 17493, subd. (b)). Also, a school district may exempt property from the Act under certain conditions (§ 17497).

Claimants' Position

Claimant alleges that the test claim statutes constitute a reimbursable mandate under article XIII B, section 6 of the California Constitution because they require claimant to:

A) Develop, adopt and implement policies and procedures for community involvement in the disposition of school buildings or space in school buildings which is not needed for school purposes prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, pursuant to Education Code Section 17388.

B) Appoint, supervise and consult with a district advisory committee established to advise the governing board in the use and disposition of surplus space and real property, pursuant to Education Code Section 17388.

C) Appoint an advisory committee consisting of not less than seven nor more than 11 members, and that is representative of each of the criteria required by Education Code Section 17389.

D) For the school district advisory committee appointed pursuant to Education Code Section 17388 to implement all of the following duties, pursuant to Education Code Section 17390:

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[10] Schoolsite is defined in the Naylor Act as "a parcel of land, or two or more contiguous parcels, which is owned by a school district." (§ 17487.)

[11] Section 54222 of the Government Code requires, when selling surplus land, making written offers to specified government entities, depending on the land's intended or suitable purposes.

[12] Education Code section 17485.

1) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property;
2) Establish a priority list of use of surplus space and real property that will be acceptable to the community;
3) Circulate throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458;
4) Make a final determination of limits of tolerance of use of space and real property; and
5) Forward to the district governing board a report recommending uses of surplus space and real property, pursuant to Education Code Section 17390 (e).

Claimant estimates that it will incur more than $1000 in staffing and other costs to implement these duties.

Claimant, in its August 2003 comments, argues that the July 25, 2003 comments by the Department of Finance should be excluded because they are not accompanied by a signed declaration that the comments are true and complete to the best of the representative's personal knowledge or information and belief, as required by section 1183.02(d) of the Commission's regulations.[13] Claimant also argues that (1) the appointment of an advisory committee is not discretionary; (2) a district does incur costs in appointing a committee; and (3) that Finance is incorrect in stating that the district may use the proceeds resulting from the sale, lease or rental of excess property to offset the costs of the committee.

State Agency Position

The Department of Finance, in its July 2003 comments, states:

> [W]e believe that a school district's appointment of a Surplus Property Advisory Committee is the result of a discretionary action taken by the governing board of the district. As a result, we conclude that the cited State laws do not create a State-mandated reimbursable activity; therefore the test claim should be denied.

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[13] Section 1183.02, subdivision (d), requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief, and that any assertions of fact are to be supported by documentary evidence. Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied on by the Commission when determining eligibility for reimbursement under article XIII B, section 6. Finance's comments as to whether the Commission should approve this test claim are thus not stricken from the administrative record.

Finance also asserts that nothing in the statute directs the governing board to sell, lease or rent excess real property, so that "even though a district is required to appoint an advisory board prior to the sale, lease or rental of excess property, it is a local discretionary action that caused the requirement of an advisory board, not a State-mandated activity."

Finance also states that it does not believe a district would incur any costs due to the statute, and that in the absence of the requirement for an advisory committee, a district facilities or business manager and staff would perform all or similar duties specified of the advisory committee in the normal conduct of good school district policies. Finally, Finance believes that should a district incur costs in complying with the test claim statutes, that it may use the proceeds from the sale, lease or rental of excess property to offset the costs.[14]

Finance filed comments on August 28, 2008, concurring with the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[15] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[16] "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."[17] 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.[18]

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[14] Education Code section 17462 requires the proceeds from the sale of surplus school district property to be used for "capital outlay or for costs of maintenance of school district property that the governing board of the school district determines will not recur within a five-year period."

[15] Article XIII B, section 6, subdivision (a), (as amended in Nov. 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.

[16] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2004) 30 Cal.4th 727, 735.

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

[18] *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.[19]

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.[20] 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.[21] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[22]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[23]

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.[24] 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."[25]

I. Are the test claim statutes state mandates within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute 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.[26] The issue is whether the test

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[19] *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*).

[20] *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).

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

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

[23] *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.

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

[25] *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.

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

claim statutes mandate a school district to form an advisory committee to perform specified duties.

As a preliminary matter, the Commission finds that the test claim statutes that require discussion are sections 17388, which forms the advisory committee, and 17390, which enumerates its duties (see pp. 3-4). The remaining statutes merely define the advisory committee's scope, in that they specify the membership of the advisory committee (§ 17389), and excuse its formation for a specified purpose (§ 17391). Thus, the sole issue is whether sections 17388 and 17390 constitute a state mandate. Section 17388 reads:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (§ 17388.)

The plain language of this single-sentence statute indicates two things. First, that the governing board may form an advisory committee. And second, that prior to the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee.

As to the first part of the sentence (formation of the committee when there is no excess property), the plain meaning of the word "may" indicates that section 17388 is not mandatory.[27] An appellate court decision confirms this interpretation. The case, *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.*,[28] involved a school district accused of failing to comply with various statutes in closing two elementary schools. The court interpreted section 17388 as follows:

> Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory. (See § 75 ["may" is permissive; "shall" is mandatory].) Because the SPAC [surplus property advisory committee] was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties.[29]

Based on the plain language of section 17388, and the interpretation of it by the *San Lorenzo Valley* court, the Commission finds section 17388 is not a state mandate within the meaning of article XIII B, section 6 if there is no surplus property involved.

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[27] Education Code section 75: ""Shall' is mandatory and 'may' is permissive."

[28] *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley School Dist.* (2006) 139 Cal.App.4th 1356 ("*San Lorenzo Valley*").

[29] *San Lorenzo Valley*, *supra*, 139 Cal.App.4th 1356, 1419.

The second part of section 17388 states that before the sale, lease, or rental of any excess real property (except rentals not exceeding 30 days) the governing board shall appoint an advisory committee. The issue is whether this is a state mandate.

In 2003, the California Supreme Court, in the *Kern High School Dist.* case,[30] considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. In *Kern*, school districts participated in various education-related programs that were funded by the state and federal government. Each of the underlying funded programs required school districts to establish and use school site councils and advisory committees. State open meeting laws later enacted in the mid-1990s required the school site councils and advisory bodies to post a notice and an agenda of their meetings. The school districts requested reimbursement for the notice and agenda costs pursuant to article XIII B, section 6.[31]

In analyzing the concept of "state mandate," the court reviewed the ballot materials for article XIII B, which defined state mandate as "something that a local government entity is required or forced to do" and "requirements imposed on local governments by legislation or executive orders."[32]

The *Kern* court also reviewed and affirmed the holding of *City of Merced v. State of California,*[33] where the city, under its eminent domain authority condemned privately owned real property and was required by statute to compensate the property owner for the loss of business goodwill. Upon review, the Supreme Court determined that, when analyzing state mandates, the underlying program must be reviewed to determine whether the claimant's participation in the underlying program is voluntary or legally compelled.[34] The *Kern* court stated:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[35] (Emphasis in original.)

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[30] *Kern High School Dist., supra,* 30 Cal.4th 727.

[31] *Id.* at page 730.

[32] *Id.* at page 737.

[33] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[34] *Kern High School Dist., supra,* 30 Cal.4th 727, 743.

[35] *Ibid.*

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.*[36] [Emphasis added.]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws.

One of the underlying programs the Supreme Court discussed in *Kern* was the American Indian Early Childhood Education Program (Ed. Code § 52060 et seq.) which, as part of participation, requires a districtwide American Indian advisory committee for American Indian early childhood education. The court stated:

> Plainly, a school district's initial and continued participation in the program is voluntary, and the obligation to establish or maintain an advisory committee arises only if the district elects to participate in, or continue to participate in, the program. … [T]he obligation to establish or maintain a site council or advisory committee arises only if a district elects to participate in, or continue to participate in, the particular program.[37]

In this claim, as with the eminent domain in *City of Merced* and the advisory committee in *Kern High School Dist.,* there is no state requirement for the school district to declare property surplus or excess, or to participate in what the *Kern* court calls the "underlying program." It is the local school district officials who make the triggering decision to designate property as surplus or transfer it. Therefore, there is no legal compulsion that creates a state mandate.[38]

In addition to the test claim statutes, the other school district surplus property statutes do not legally compel property to be designated as surplus or excess, or to be transferred. For example, the Naylor Act (§§ 17485-17500) states that "The governing board of any school district may sell or lease any schoolsite containing land described in Section 17486, and, if the governing board decides to sell or lease such land, it shall do so in accordance with this article."[39] A second example is in Education Code section 17458, which requires the advisory committee to hold hearings before selling or leasing real property to contracting agencies under the Child Care and Development Services Act (see p. 5 above). But there is no requirement to sell or lease the

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[36] *Id.* at 731.

[37] *Id.* at 744.

[38] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

[39] Education Code section 17488.

property, as stated in part: "[T]he governing board of any school district … seeking to sell or lease any real property it deems to be surplus property **may** first offer that property for sale or lease to any contracting agency, as defined in Section 8208 of the Education Code, pursuant to the following conditions …"[40] One of the conditions is the advisory committee hearing, which is contingent on the initial decisions to deem the property surplus and offer it to a contracting agency.

Legal compulsion aside, in the *Kern High School Dist.* case, the California Supreme Court found that state mandates could be found in cases of practical compulsion on the local entity when a statute imposes "certain and severe penalties such as double taxation or other draconian consequences"[41] for not participating in the programs. The court also described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."[42]

Claimant, in August 2003 rebuttal comments, argues that school districts are practically compelled to use the advisory committee as follows:

> This argument is pure nonsense and suggests that school districts should permit the underutilization of district assets. Migrating populations, changes in the population density of school age children, and other socio-economic conditions dictate the sale or disposal of surplus school property. The decision to act is not discretionary, demographic conditions beyond the control of governing boards dictate those decisions. And once the decision is dictated, the appointment of an advisory committee is a mandated activity for which reimbursement is required.[43]

Local governments could make the same argument about use of eminent domain at issue in *City of Merced*, i.e., that conditions beyond the control of local government make the use of eminent domain necessary. The *City of Merced* court, however, did not find this a compelling reason for making the cost of eminent domain reimbursable. The decision to invoke eminent domain, just like the decision to designate property as surplus, is made at the local level.[44]

There is no evidence in the record of practical compulsion, in that there are no "certain and severe penalties such as double taxation or other draconian consequences"[45] for school districts' failing to designate or transfer property as surplus or excess.

Therefore, the Commission finds that the reasoning of *City of Merced* and *Kern High School Dist.* control this claim. That is, because there is no legal or practical compulsion to designate as surplus or transfer (sell, lease, or rent) school district property, neither formation of the advisory

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[40] Education Code section 17458. Emphasis added.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

[42] *Id.* at p. 731.

[43] Letter from claimant, August 18, 2003, page 2.

[44] Cf. *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

[45] *Kern High School Dist., supra,* 30 Cal.4th 727, 751.

committee (§ 17388), nor its activities (§ 17390), are state mandates imposed on a school district. Accordingly, the test claim statutes (§§ 17387-17389) do not constitute a state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

II. Does Education Code section 17388 constitute a new program or higher level of service?

As an alternative ground for denial, the Commission finds that section 17388 is not a new program or higher level of service.[46] Claimant pled the test claim statutes starting with Statutes 1982, chapter 689. The advisory committee statute, however, was first enacted in 1976 (Stats. 1976, ch. 606, Ed. Code, §§ 10651.1 et seq.). Although it was not included in the 1976 reorganization of the Education Code (Stats. 1976, ch. 1010), it was enacted again in 1977 (Stats. 1977, ch. 36, § 448, Ed. Code, § 39384 et seq.) and amended in 1980 (Stats. 1980, ch. 1354).

The 1977 statute, former section 39384, subdivision (c), read as follows:

> The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.

Because this statute provided for the formation of the advisory committee before the 1982 test claim statute pled by claimant, the Commission finds that section 17388 is not a new program or higher level of service.

CONCLUSION

For the reasons discussed above, the Commission finds that the test claim statutes (Ed. Code, §§ 17387, 17388, 17389, 17390, 17391; Statutes 1982, chapter 689, Statutes 1984, chapter 584, Statutes 1986, chapter 1124, Statutes 1987, chapter 655, Statutes 1996, chapter 277) are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835-836.

Coast Community College District, et al. v. Commission on State Mandates Supreme Court of California, Case No. S262663

***AMICUS CURIAE'S* MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECLARATION OF NICHOLAS CLAIR**

EXHIBIT 3

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6

Vehicle Code Sections 22112, 22454, 27316, 27316.5

Statutes 1999, Chapter 647 (AB 1573);
Statutes 1999, Chapter 648 (AB 15);
Statutes 2001, Chapter 581 (SB 568);
Statutes 2002, Chapter 360 (AB 2681);
Statutes 2002, Chapter 397 (SB 1685)

Filed on July 2, 2003,

By San Diego Unified School District, Claimant.

Case No.: 03-TC-01

School Bus Safety III

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

(Adopted on May 26, 2011)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Dated: May 31, 2011

Drew Bohan, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6 Vehicle Code Sections 22112, 22454, 27316, 27316.5 Statutes 1999, Chapter 647 (AB 1573); Statutes 1999, Chapter 648 (AB 15); Statutes 2001, Chapter 581 (SB 568); Statutes 2002, Chapter 360 (AB 2681); Statutes 2002, Chapter 397 (SB 1685) Filed on July 2, 2003, By San Diego Unified School District, Claimant.	Case No.: 03-TC-01 *School Bus Safety III* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted on May 26, 2011)*

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Art Palkowitz appeared on behalf of San Diego Unified School District. Donna Ferebee 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 at the hearing by a vote of 5-1 to deny this test claim.

Summary of Findings

This test claim filed by San Diego Unified School District addresses statutes that impose activities on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.

The Commission finds that some of the test claim statutes do not impose any activities on school districts or do not impose new programs or higher levels of service on school districts. In addition, school districts are authorized, but not required, to provide school bus or school pupil activity bus transportation of pupils to and from school under state law. In addition, under federal law districts are not required to provide school bus or school pupil activity bus transportation of pupils with disabilities. As a result, the also Commission finds that the test claim statutes do not impose state-mandated activities on school districts.

The Commission findings are consistent with the court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision on remand regarding the *School Bus Safety II* (97-TC-22) test claim, and the decision in

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

The Commission concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim filed by San Diego Unified School District alleges reimbursable state-mandated activities imposed on school districts, including giving school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.[1]

Prior to the filing of this test claim, the Commission heard the *School Bus Safety II* (97-TC-22) test claim, which was filed by Clovis Unified School District in 1997. The *School Bus Safety II* (97-TC-22) test claim addresses prior versions of some of the statutes in the current test claim. Specifically the test claim statutes pled in the *School Bus Safety II* (97-TC-22) test claim were Education Code sections 39831.5 (former section 38048) and 39831.3, and Vehicle Code section 22112, as added or amended by Statutes 1994, chapter 831, Statutes 1996, chapter 277, and Statutes 1997, chapter 739. In this test claim, the claimant has pled various statutes, including subsequent amendments that occurred in 1999 and 2002 to Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112.[2]

On July 29, 1999, the Commission adopted a statement of decision for *School Bus Safety II* (97-TC-22), which concluded that the test claim legislation imposed the following reimbursable state-mandated activities:

- Instructing all prekindergarten and kindergarten pupils in school bus 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 school bus or school pupil activity bus. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)

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[1] Education Code section 39830.1 defines "school pupil activity bus" as any motor vehicle, other than a school bus, operated by a carrier in business for the principal purpose of transporting members of the public on a commercial basis, which is used under a contractual agreement between a school and the carrier to transport school pupils at or below the 12th grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent is present to accept the pupil or place the pupil on the bus.

[2] Education Code section 39831.5 and Vehicle Code section 22112, as amended by Statutes 1999, chapter 647; and Vehicle Code section 22112, as amended by Statutes 2002, chapter 397.

- Providing written information on school bus safety to the parents or guardians of pupils in prekindergarten, kindergarten, and grades 1 to 6, inclusive, who were not previously transported in a school bus 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 school bus safety procedures as necessary. The information shall include, but is not limited to: (A) a list of school bus stops near each pupil's home; (B) general rules of conduct at school bus loading zones; (C) red light crossing instructions; (D) school bus danger zones; and (E) walking to and from school bus stops. (Ed. Code, § 39831.5, subd. (a)(1); Ed. Code, § 38048, subd. (a)(1).)
- Preparing and revising 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 school bus 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, school bus 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.)

However, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision in *School Bus Safety II* was challenged in Sacramento County Superior Court. The petitioner, Department of Finance, sought a writ of mandate 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.[3]

On December 22, 2003, the court entered judgment for Finance. By granting Finance's petition the court agreed 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. On February 3, 2004, the court 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.[4]

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.

On remand, the Commission found 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. In addition, the Commission states, "even if school bus transportation is used for [students with disabilities], 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 cost that may result from the test claim statutes."[5] Therefore the Commission found that 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.

Because the Commission has already made a mandate determination in its decision on *School Bus Safety II* (97-TC-22) regarding Education Code section 39831.5 (former section 38048), and Vehicle Code section 22112, as they existed prior to the 1999 amendments pled in this test claim, the Commission does not have jurisdiction to make a mandate determination on the activities contained in the prior versions of the code sections.[6] As a result, the discussion regarding these

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

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

[5] Commission statement of decision for *School Bus Safety II* (97-TC-22) (Remand), March 30, 2005, p. 9.

[6] Government Code section 17521 defines "test claim" as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. On April 26, 1994, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1992, chapter 624, which were pled in the *School Bus Safety* (CSM-4433). On March 30, 2005, the Commission made a mandate determination on Education Code section 39831.5 (former section 38048) and Vehicle Code section 22112, as amended by Statutes 1996, chapter 277 and Statutes 1997, chapter 739, which were pled in the *School Bus Safety II* (97-TC-22).

code sections will only address substantive amendments made to the code sections in Statutes 1999, chapters 647 and 648, and Statutes 2002, chapter 397.

The court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), and the Commission's subsequent decision on remand denying the *School Bus Safety II* (97-TC-22) test claim, were made after the filing of this test claim. The claimant has not withdrawn this test claim in light of the court's judgment and the Commission's decision. In addition, neither the claimant nor the Department of Education filed comments regarding the impact of the court's judgment and the Commission's decision on the current test claim.

A. Claimant's Position

Prior to the court's judgment and the Commission's decision regarding *School Bus Safety II* (97-TC-22), which found that the provision of school bus transportation services is discretionary, the claimant alleged that the test claim statutes impose reimbursable state-mandated activities, which include: providing instruction to pupils in school bus emergency procedures and passenger safety, providing information on school bus safety to parents, requiring the school bus driver to engage in specific activities when approaching specified areas and loading and unloading pupils, and purchasing or leasing buses equipped with pelvic and upper torso passenger restraint systems.[7]

The Commission has not received any comments from the claimant in response to the draft staff analysis.

B. Department of Education

Prior to the court's judgment and the Commission's decision, which denied the *School Bus Safety II* (97-TC-22) test claim and vacated the applicable parameters and guidelines, the Department of Education argued the following:

> In general, we note that because the test claim legislation builds upon existing mandated programs and training, the cost of the activities cited by the claimant would appear to be minimal. Especially, in light of the recent amended consolidated School Bus Safety Parameters and Guidelines, which are expected to substantially reduce the cost of the original mandate.
>
> On Page 17, Section D. Costs Incurred or Expected to be Incurred from Mandate, the claimant states that it will incur costs due to higher costs associated with increased school bus purchase prices due to new passenger restraint systems, additional buses due to decreased capacity as a result of new passenger restraint systems, additional drivers, additional maintenance, and additional storage costs. However, several manufacturers have developed or are developing seating systems that do not reduce school bus capacity and it is unclear what, if any, cost will actually be added to the price of school buses. Furthermore, the new requirements will apply to all school buses manufactured for use in California, not just those purchased by public school districts. Therefore, the requirements will apply equally to both public and private entities, which means that these requirements do not meet the test of imposing a requirement unique to

[7] Test Claim 03-TC-01, dated July 2, 2003, pgs. 11-17.

government. As a result, these requirements do not constitute a mandated program.[8]

The Commission has not received any comments from the Department of Education in response to the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[9] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[10] "It's 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."[11] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or requires a local agency or school district to engage in an activity or task.[12] 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 under existing programs.[13]

The courts have defined a "program" that is 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.[14] 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

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[8] Department of Education Comments in Response to Test Claim 03-TC-01, dated August 11, 2003.

[9] 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."

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

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

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

[13] *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*).

[14] *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 (*Los Angeles I*); *Lucia Mar*, supra, 44 Cal.3d 830, 835).

legislation.[15] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[16] Finally, the newly required activity or higher level of service must impose costs on local agencies as a result of local agencies' performance of the new activities or higher level of service that were mandated by the state statute or executive order.[17]

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.[18] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[19]

A. The test claim statutes do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the headers impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Adoption of Regulations (Ed. Code, §§ 38047.5 and 38047.6)

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language governs.[20] Education Code sections 38047.5 and 38047.6 require the State Board of Education to adopt regulations requiring passengers of school buses and school pupil activity buses equipped with passenger restraint systems to use the passenger restraint system. The plain language of these code sections does not impose any requirements on school districts. Instead, the code sections address the duties of the State Board of Education. Thus, the Commission finds that Education Code sections 38047.5 and 38047.6 do not impose any reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

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

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

[17] *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.

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

[19] *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

Instruction in School Bus Emergency Procedure and Passenger Safety (Ed. Code, § 39831.5)

Education Code section 39831.5 was amended by Statutes 1999, chapter 648, as indicated by the following underlined provisions:

> (a) All pupils in prekindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:
>
> (1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with written information on schoolbus safety. The information shall include, but not be limited to, all of the following:
>
> (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.
>
> (E) Walking to and from schoolbus stops.
>
> (2) At least once in each school year, all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint systems, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit. As part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors.
>
> (3) Instruction on the use of passenger restraint systems shall include, but not be limited to, all of the following:
>
> (A) Proper fastening and release of the passenger restraint system.
>
> (B) Acceptable placement of passenger restraint systems on pupils.
>
> (C) Times at which the passenger restraint systems should be fastened and released.
>
> (D) Acceptable placement of the passenger restraint systems when not in use.
>
> (4) Prior to departure on a school activity trip, all pupils riding on a schoolbus or school pupil activity bus shall receive safety instruction that includes, but is not limited to, location of emergency exits, and location and use of emergency equipment. Instruction also may include responsibilities of passengers seated next to an emergency exit.

(b) The following information shall be documented each time the instruction required by paragraph (2) of subdivision (a) is given:

(1) Name of school district, county office of education, or private school.

(2) Name and location of school.

(3) Date of instruction.

(4) Names of supervising adults.

(5) Number of pupils participating.

(6) Grade levels of pupils.

(7) Subjects covered in instruction.

(8) Amount of time taken for instruction.

(9) Bus driver's name.

(10) Bus number.

(11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

As relevant to this test claim, Education Code section 39831.5 requires school districts to engage in the following activity:

> Include in the annual school bus passenger safety instructions given to pre-kindergarten through eighth grade students that are transported on school buses or school pupil activity buses for home-to-school transportation the following:
>
> a. how to safely cross the street, highway, or private road; and
>
> b. instruction on the use of passenger restraint systems, including: (1) proper fastening and release of the passenger restraint system; (2) acceptable placement of passenger restraint systems on pupils; (3) times at which the passenger restraint systems should be fastened and released; and (4) acceptable placement of the passenger restraint systems when not in use. (Ed. Code, § 39831.5 (Stats. 1999, ch. 648, § 2.5)).

In order to determine whether the above activity constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[21]

The activity of including information in annual school bus passenger safety instructions is triggered by a school district's decision to provide school bus or school pupil activity bus transportation to students. However, under state law, school districts are authorized but not required to provide school bus or school pupil activity bus transportation of pupils to and from

[21] *Kern High School Dist., supra,* 30 Cal.4th at p. 743.

school.[22] Districts are authorized to "provide for the transportation of pupils to and from school . . ." and are authorized to provide transportation in a variety of ways, including purchasing or renting a vehicle, contracting with a municipally owned transit system, or providing reimbursement to parents for the cost of transportation.[23] In *Arcadia Unified School Dist. v. State Dept. of Education*, a case in which the California Supreme Court found that an Education Code section that authorizes charging a fee for pupil transportation does not violate the free school guarantee or equal protection clause of the California Constitution, the Court confirmed that California schools need not provide bus transportation at all. Specifically, the Court states:

> 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.)[24]

Likewise, federal law, specifically the Individuals with Disabilities Education Act (IDEA), does not require school districts to provide *school bus* or *school pupil activity bus* transportation for students with disabilities. In *State of California Department of Finance v. Commission on State Mandates* (02CS00994), discussed above, the court raised the issue of whether the IDEA requires school bus transportation for students with disabilities. On remand the Commission, found that the IDEA does not require school bus transportation of students.

The 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."[25] "Free appropriate public education" (FAPE) is defined to mean special education and related services that: (1) have been provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the State educational agency; (3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (4) are provided in conformity with the individualized education program (IEP).[26]

An IEP is a written statement, developed in a meeting between the school, teachers, and the parents of a child with a disability (IEP team), that includes a statement of the special education

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[22] Education Code section 39800.

[23] Education Code sections 39800 and 39806.

[24] *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 264.

[25] Title 20 United States Code section 1400(d)(1)(A) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

[26] Title 20 United States Code sections 1401(9) (as reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004), formerly section 1401(8) (as added by Pub.L. No. 105-17) (June 4, 1997)).

and related services and supplementary aids and services that are to be provided to the child.[27] "Related services" is defined by the IDEA to mean "*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 . . . ."[28] As a result, if transportation is included in a child's IEP, transportation would be a related service that must be provided to the child. However, *school bus* or *school pupil activity bus* transportation is not required in order to comply with the possible requirement to provide transportation under the IDEA.

As defined by the implementing regulations of the IDEA, "transportation" includes: (1) travel to and from school and between schools; (2) travel in and around school buildings; (3) specialized equipment (*such as* special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with disability.[29] Thus, under federal law the provision of bus transportation is a transportation option, but it is not a required option. Similarly guidelines issued by the California Department of Education for use by IEP teams when determining the need for and the provision of transportation services provide:

> 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.[30]

In addition, in regard to the provision of transportation in general (i.e. not specifically applicable to students with disabilities), in lieu of providing transportation school districts may pay parents of pupils a sum not to exceed the cost of actual and necessary travel incurred in transporting students to and from schools in the district or the cost of food and lodging of the student at a place convenient to the schools if the cost does not exceed the estimated cost of providing transportation of the student.[31] Thus, although school districts may provide school bus or school pupil activity bus transportation, along with a variety of other possible options, to fulfill the possible transportation requirements under the IDEA, neither state law nor the IDEA require school districts to provide school bus or school pupil activity bus transportation. As a result, consistent with the court's judgment in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Commission's decision on remand regarding the *School Bus Safety II* (97-TC-22) test claim, and the *Kern High School Dist*. case, the Commission finds that Education Code section 39831.5 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

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[27] Title 20 United States Code section 1414(d) (as added by Pub.L. No. 105-17 (June 4, 1997) and reauthorized by Pub.L. No. 108-446 (Dec. 3, 2004)).

[28] Title 20 United States Code section 1401(22) (emphasis added).

[29] 34 Code of Federal Regulations part 300.24(b)(15), as amended by 64 FR 12418 (March 12, 1999), and part 300.34(c)(16), as amended by 71 FR 46753 (Aug. 14, 2006).

[30] California Department of Education "Special Education Transportation Guidelines" at <http://www.cde.ca.gov/sp/se/lr/trnsprtgdlns.asp> as of February 23, 2011.

[31] Education Code sections 39806 and 39807.

Stopping to Load or Unload Pupils (Veh. Code, § 22112)

Vehicle Code section 22112 was amended by Statutes 1999, chapter 647, as shown by the underlined provisions that indicate additions or changes and ellipses that indicate deletions:

> (a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.
>
> (b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.
>
> (c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer, the driver shall do all of the following:
>
> > (1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.
> >
> > (2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.
>
> (d) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:
>
> > (1) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.
> >
> > (2) Require all pupils to walk in front of the bus as they cross the highway or private road.
> >
> > (3) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the schoolbus and it is safe to move before setting the schoolbus in motion.
>
> (e) Except at a location where pupils are loading or unloading from a schoolbus and must cross a highway or private road upon which the schoolbus is stopped, the flashing red signal lights and stop signal arm requirements imposed by . . . this section do not apply to a schoolbus driver at any of the following locations . . . :
>
> > (1) Schoolbus loading zones on or adjacent to school grounds or during an activity trip, if the schoolbus is lawfully parked.

(2) Where the schoolbus is disabled due to mechanical breakdown.

(3) Where pupils require assistance to board or leave the schoolbus.

(4) Where the roadway surface on which the bus is stopped is partially or completely covered by snow or ice and requiring traffic to stop would pose a safety hazard.

(5) On a state highway with a posted speed limit of 55 miles per hour or higher where the schoolbus is completely off the main traveled portion of the highway.

(6) Any location determined by a school district, . . . with the approval of the Department of the California Highway Patrol, . . . to present a . . . traffic . . . or safety hazard.

(f) Notwithstanding subdivisions (a) to (d), inclusive, the Department of the California Highway Patrol may require the activation of an approved flashing amber light warning system, if the schoolbus is so equipped, or the flashing red signal light and stop signal arm, as required on the schoolbus, at any location where the department determines that the activation is necessary for the safety of school pupils loading or unloading from a schoolbus.

The amendments made to Vehicle Code section 22112 by Statutes 1999, chapter 647, do not add any activities to the code section. Instead, the amendments either reduce the instances in which a school bus driver must engage in an activity (i.e. Veh. Code, § 22112, subd. (d)) or specify when the duty of a school bus driver to use the flashing red signal lights and stop signal arm do not apply. In 2002, Vehicle Code section 22112 was amended again to make clarifying non-substantive changes to the code section.[32] As a result, Vehicle Code section 22112, as amended by Statutes 1999, chapter 647, and Statutes 2002, chapter 397, does not require school districts to engage in any activities.

In addition, even if the 1999 and 2002 amendments to Vehicle Code section 22112 imposed new activities on school districts, these activities are triggered by the underlying decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the "Instruction in School Bus Emergency Procedure and Passenger Safety" section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any new activities required by Vehicle Code section 22112 are triggered by the local decision to provide school bus transportation, and would not be state-mandated activities.

Meeting or Overtaking School Buses (Veh. Code, § 22454)

Vehicle Code section 22454 addresses the duty of drivers to stop immediately before passing a school bus and to not pass a school bus if the bus is stopped and displays a flashing red light signal and stop signal arm. Section 22454 authorizes, but does not require, the bus driver to report a violation of section 22454 to the local law enforcement agency that has jurisdiction of the offense. If a school bus driver does report a violation of section 22454 to the local law enforcement agency, the law enforcement agency is required to issue a letter of warning to the registered owner of the vehicle.

[32] Statutes 2002, chapter 397.

Although the claimant has pled Vehicle Code section 22454, it is unclear from the test claim filing what activities are alleged to be mandated by this code section. As it applies to school districts, Vehicle Code section 22454 does not require school bus drivers to engage in any activities. In addition, the claimant does not have standing to claim for any costs incurred by local law enforcement agencies even if the district employs police officers because, as determined by the court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 (*POBRA*), school districts are not required to employ peace officers.[33]

In addition, any activity contained in Vehicle Code section 22454 is triggered by the underlying decision by school districts to provide school bus or school pupil activity bus transportation. As discussed above in the "Instruction in School Bus Emergency Procedure and Passenger Safety" section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. Thus, any possible activities required by Vehicle Code section 22454 would not be state-mandated activities. As a result, the Commission finds that Vehicle Code section 22454 does not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

Pelvic and Upper Torso Passenger Restraint Systems for School Buses and School Pupil Activity Buses (Veh. Code, § 27316 and 27316.5)

Vehicle Code section 27316 requires school buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school bus is: (1) designed to carry more than 16 passengers and the driver and is manufactured on or after July 1, 2005; or (2) designed to carry not more than 16 passengers and the driver, and is manufactured on or after July 1, 2004.[34] Similarly, Vehicle Code section 27316.5 requires school pupil activity buses purchased or leased for use in California to be equipped at all designated seating positions with a combination pelvic and upper torso passenger restraint system if the school pupil activity bus is designed to carry not more than 16 passengers and the driver and is manufactured on or after July 1, 2004. In summary, when school districts purchase or lease school buses or school pupil activity buses, the buses must be equipped with passenger restraint systems.

However, the activities required by Vehicle Code sections 27316 and 27316.5 are triggered by the underlying discretionary decision by school districts to provide school bus or school pupil

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[33] *POBRA*, *supra*, 170 Cal.App.4th at pgs. 1366-1369. Even if school districts had standing to claim reimbursement for requirements imposed on local law enforcement agencies by Vehicle Code section 22454, the activity is directly related to the enforcement of an infraction created by section 22454. Under Government Code section 17556, subdivision (g), activities directly related to the enforcement of an infraction do not impose costs mandated by the state subject to reimbursement under article XIII B, section 6 of the California Constitution. As a result, Vehicle Code section 22454 would not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

[34] Vehicle Code sections 27316 and 27316.5 refer to "Type 1" or "Type 2" school buses or school pupil activity buses when addressing passenger restraint requirements. California Code of Regulations, title 13, section 1201, subdivision (b) (Register 2007, No. 41), defines "Type 1" as a school bus or school pupil activity bus that is designed to carry more than 16 passengers and the driver. As relevant to this test claim, "Type 2" is defined as a school bus or school pupil activity bus designed to carry not more than 16 passengers and the driver.

activity bus transportation. As discussed above in the "Instruction in School Bus Emergency Procedure and Passenger Safety" section of this analysis, school districts are not required to provide school bus or school pupil activity bus transportation to students. As a result, the Commission finds that Vehicle Code sections 27316 and 27316.5 do not impose reimbursable state-mandated activities subject to article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission concludes that Education Code sections 39831.5 (former section 38048) (Stats. 1999, ch. 648), 38047.5 (Stats. 1999, ch. 648), and 38047.6 (Stats. 2002, ch. 360); and Vehicle Code sections 22112 (Stats. 1999, ch. 647, and Stats. 2002, ch. 397), 22454 (Stats. 1999, ch. 647), 27316 (Stats. 1999, ch. 648, and Stats. 2001, ch. 581), and 27316.5 (Stats. 2002, ch. 360), do not impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

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Case Number: **S262663**
Lower Court Case Number: **C080349**

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