ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Government Code
Sections 56001, 56326.5, 56381, 56381.6,
56425, 56426.5, and 56430

Statutes 1991, Chapter 439 (AB 748)
Statutes 2000, Chapter 761 (AB 2838)
Statutes 2002, Chapter 493 (AB 1948)

LAFCO Municipal Services Review Guidelines (Final Draft, October 3, 2002)
LAFCO Municipal Services Review Guidelines Appendices (Final Draft, October 3, 2002)

Local Agency Formation Commissions

02-TC-23

Sacramento Metropolitan Fire District, Claimant

EXECUTIVE SUMMARY

This test claim addresses changes to Local Agency Formation Commissions ("LAFCOs"), which are statutorily-created local administrative bodies that make determinations regarding formation and development of local agencies. The specific modifications are to the representatives on LAFCOs, the mechanisms for funding LAFCO operations, and the process for LAFCOs to adopt and update the "sphere of influence" for each local agency within a county.

The Test Claim Statutes Impose a Partially Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution

In 1991, the Sacramento County LAFCO was required by statute to have two independent special districts represented on it. The claimant, one of 66 independent special districts in Sacramento County, seeks reimbursement for its representation on the LAFCO – in the event it is chosen to sit on the LAFCO – as well as its representation on the independent special district selection committee, a committee consisting of representatives from all independent special districts in the county established to choose the independent special districts that would be represented on the LAFCO.

Staff finds that, although the test claim statutes require special districts to be represented on the Sacramento County LAFCO, actual participation by a district is neither legally nor practically compelled since the particular special district representatives are chosen by the *local* independent special district selection committee, and nonparticipation by a chosen district does not result in "certain and severe" penalties. Moreover, although the test claim statutes require the independent special district selection committee to *consist* of the presiding officer of the legislative body of each independent special district, actual participation by the districts is neither legally nor practically compelled since a quorum of 34 out of 66 districts is required for the committee to operate – up to 32 districts could decline to participate at any

given meeting – and nonparticipation by a particular district does not result in "certain and severe" penalties.

Claimant also seeks reimbursement for its share of the funding of the Sacramento County LAFCO as required by the test claim statutes. However, staff finds that such costs are not reimbursable because the provision does not mandate any activities or impose a "cost shift" from the *state* to local agencies pursuant to *Lucia Mar Unified School Dist.* or article XIII B, section 6, subdivision (c) (Proposition 1A), as enacted by the voters on November 2, 2004. Instead, the cost shift is from the *county* to the districts, since the immediately previous statute required the counties to provide the entire budget for LAFCOs.

Finally, claimant seeks reimbursement for gathering and providing information to the Sacramento County LAFCO for sphere of influence reviews, which require municipal service reviews, pursuant to statute and Municipal Service Review Guidelines and Appendices adopted by the Office of Planning and Research (OPR). Staff finds that only one statutory provision constitutes a state-mandated "new program or higher level of service" in an existing program: special districts shall file written statements with the LAFCO specifying the functions or classes of service provided by those districts, when the LAFCO prepares or updates a sphere of influence. All other activities claimed for this purpose are either required of the *LAFCO* and *not* special districts, or the activities are *not mandated* since the Municipal Service Review Guidelines and Appendices do not constitute executive orders.

Only those independent special districts that are subject to article XIII B, section 6 are eligible claimants.

Conclusion

Staff finds that Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)), mandates a "new program or higher level of service" in an existing program, in that it requires special districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts, when the LAFCO prepares or updates a sphere of influence. Furthermore, the provision imposes costs mandated by the state pursuant to Government Code section 17514 and article XIII B, section 6. Therefore, the activity constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Only those independent special districts that are subject to article XIII B, section 6 – i.e., those districts that, because of their funding, are not excluded from the spending limits pursuant to article XIII B, section 9, subdivision (c) – are eligible claimants. The reimbursement period begins July 1, 2001.

Staff concludes that Government Code section 56001 declares legislative findings and is helpful to interpret the test claim statutes, but does not mandate any activities. Staff further concludes that Government Code sections 56326.5, 56381, 56381.6, 56425 (except subdivision (h)(1), subsequently renumbered to subdivision (i)(1)), 56426.5, and 56430, and the Municipal Service Review Guidelines and Appendices developed by OPR, as pled, along with any other test claim statutes, guidelines and allegations not specifically approved above, do not mandate a new program or higher level of service subject to article XIII B, section 6.

Recommendation

Staff recommends the Commission adopt this analysis to partially approve this test claim.

STAFF ANALYSIS

Claimant

Sacramento Metropolitan Fire District

Chronology

05/29/03	Sacramento Metropolitan Fire District filed test claim with the Commission on State Mandates ("Commission")[1]
06/19/03	Commission staff deemed the test claim complete
07/07/03	The Department of Finance requested an extension of time to file comments on the test claim
07/08/03	Commission staff approved extension of time, to August 18, 2003, to file comments on the test claim
07/18/03	The Department of Finance submitted comments on test claim with the Commission
09/25/03	Sacramento Metropolitan Fire District submitted rebuttal comments to the Department of Finance comments on the test claim with the Commission
06/28/07	Commission staff issued draft staff analysis

Background

This test claim addresses changes to funding mechanisms for, and representation on, Local Agency Formation Commissions ("LAFCOs"), as well as modifications to the process for LAFCOs to adopt and update the "sphere of influence"[2] for each local government agency within a county.

Historical Development of LAFCOs

In light of competing urban, social and economic interests affected by land annexation, and "[a]fter years of failure to cope with these problems to any meaningful extent …, the Legislature finally acknowledged 'the need for a supra-local agency to intervene in boundary decisions' affecting local governments, and, in 1963, established a LAFCO in each [California] county to serve this purpose."[3,4] Thus, LAFCOs are statutorily-created administrative bodies which make quasi-legislative determinations[5] regarding formation and development of local

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[1] The reimbursement period for this test claim begins July 1, 2001.

[2] "Sphere of influence" means a plan for the probable physical boundaries and service area of a local agency, as determined by the LAFCO. (Gov. Code § 56076.)

[3] *Tillie Lewis Foods, Inc. v. City of Pittsburg (Tillie Lewis)* (1975) 52 Cal.App.3d 983, 995.

[4] Statutes 1963, chapter 1808.

[5] *Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, 495.

agencies.[6] The courts have referred to LAFCOs as the Legislature's "watchdogs" over local boundaries.[7]

The LAFCOs' purposes have evolved over the years, and in 1985, the laws governing local boundary changes were consolidated into the Cortese-Knox Local Government Reorganization Act ("Cortese-Knox Act"),[8] which provided the "sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts."[9] The Cortese-Knox Act stated the following purposes for LAFCOs:

> Among the purposes of a [LAFCO] are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the [LAFCO] is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities.[10]

The Cortese-Knox Act charged LAFCOs with a variety of powers and duties, including but not limited to: reviewing proposals for changes of organization or reorganization;[11] approving annexation of unincorporated, noncontiguous territory in certain instances;[12] adopting written procedures, regulations and standards;[13] and developing, determining, adopting and periodically updating the sphere of influence of each local governmental agency within the county.[14]

By June 30, 1985, each LAFCO was required to adopt a sphere of influence for each local governmental agency within its jurisdiction,[15] in order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies.[16] In determining the sphere of influence of each local agency,

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[6] Government Code section 56301.

[7] *Tillie Lewis, supra,* 52 Cal.App.3d 983, 1005.

[8] Statutes 1985, chapter 541; Government Code sections 56000 et seq.

[9] Government Code section 56100.

[10] Government Code section 56301, as enacted by Statutes 1985, chapter 541.

[11] Government Code section 56375, subdivision (a).

[12] Government Code section 56375, subdivision (e), subsequently renumbered to subdivision (d).

[13] Government Code section 56375, subdivisions (i), (j), and (k), subsequently renumbered to subdivisions (g), (h), and (i).

[14] Government Code section 56425.

[15] Government Code section 56426.

[16] Government Code sections 56076 and 56425.

the LAFCO was required to consider and prepare a written statement of its determination with respect to the following points:

1) The present and planned land uses in the area, including agricultural and open-space lands.
2) The present and probable need for public facilities and services in the area.
3) The present capacity of public facilities and adequacy of public services which the agency provides or is authorized to provide.
4) The existence of any social or economic communities of interest in the area if the LAFCO determines that they are relevant to the agency.[17]

LAFCOs were originally established with representatives from the county, cities in the county and the general public,[18] with the option of adding independent special districts.[19] Any county choosing to have independent special district representation on the LAFCO was required to establish an independent special district selection committee to choose such members, which shall consist of the presiding officer of the legislative body of each independent special district.[20] Funding for LAFCOs was historically provided by the county served[21] and by fees for the cost of specified proceedings undertaken by the LAFCO.[22]

In recognition of the fact that nearly 35 years had passed since a thorough investigation of the policies, practices, and statutes affecting the organization and boundaries of California's local agencies had been conducted, in 1997 the Legislature created the Commission on Local Governance for the 21st Century.[23] The 21st Century Commission, as it came to be known, was charged with reviewing current statutes regarding policies, criteria, procedures and precedents for city, county and special district boundary changes, to solicit the views and advice of the public, to propose criteria to increase citizen and community participation in city, county, and special district governments consistent with federal law, and to recommend any appropriate statutory changes.[24]

On January 20, 2000, after extensive hearings and deliberation, the 21st Century Commission released its final report, entitled *Growth Within Bounds*. The report made the following recommendations:

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[17] *Ibid.*

[18] Former Government Code section 54780, repealed and renumbered to Government Code section 56325. (Stats. 1985, ch. 541.)

[19] Government Code section 56332, subdivision (a), as enacted by Statutes 1985, chapter 541.

[20] *Ibid.*

[21] Government Code section 56381, as enacted by Statutes 1985, chapter 541.

[22] Government Code section 56383.

[23] AB 1484 (Hertzberg), Statutes 1997, chapter 943.

[24] Government Code section 56302, subdivision (c), as enacted by Statutes 1997, chapter 943.

1. LAFCO policies and procedures should be streamlined.
2. LAFCOs should be neutral, independent, and provide balanced representation for counties, cities and special districts, with funding provided from each of those categories.
3. LAFCO powers should be strengthened to prevent sprawl and ensure the orderly extension of government services.
4. Policies to protect agricultural and open space lands and other resources should be strengthened.
5. The state-local fiscal relationship should be comprehensively revised.
6. The state should develop incentives to encourage compatibility and coordination of plans and actions of all local agencies, including school districts, within each region as a way to encourage an integrated approach to public service delivery and improve overall governance.
7. Communication, coordination, and procedures of LAFCOs and local governments should be enhanced to promote government efficiency.
8. Opportunities for public involvement, active participation, and information regarding government decision-making should be increased.

The Legislature responded by enacting many of the 21st Century Commission's recommendations into the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.[25] The act expands the purposes of the LAFCO to include preserving open space and agricultural lands, efficiently providing government services, and, when formation of a new government entity is proposed, making a determination as to whether existing agencies can feasibly provide the needed services in a more efficient and accountable manner.[26] The relevant provisions of this act, as well as the other test claim statutes and related executive orders, are summarized below.

Sacramento County LAFCO Representation (Stats. 1991, Ch. 439):

- Section 56326.5 was added to the Government Code in 1991 to provide that, for the *Sacramento County LAFCO only*, in addition to the basic representation of five members, — i.e., two county members, two members representing cities in the county, and one general public member[27] — one of the city members must be from the City of Sacramento and two members representing special districts in the County must sit on the LAFCO. The record for this legislation indicates that Sacramento County LAFCO, prior to the enactment of section 56326.5, chose to include special district representation as authorized by Government Code section 56332.[28] A requirement that independent special districts sit on the Sacramento LAFCO triggers the additional requirement for an independent special

[25] AB 2838, Statutes 2000, chapter 761.

[26] Government Code section 56301.

[27] Government Code section 56325, as enacted by Statutes 1985, chapter 541.

[28] Governor's Office of Planning and Research, Enrolled Bill Report for AB 748, September 3, 1991, page 1.

district selection committee, which is established pursuant to Government Code section 56332.

Cortese-Knox-Hertzberg Local Government Reorganization Act (Stats. 2000, Ch. 761):

- The legislative findings and declarations for the Act were amended to include discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services.[29]
- Separate and apart from Sacramento County, the basic number of members on LAFCOs for most of the other counties was increased from five to seven, with the two additional members representing independent special districts.[30] When a LAFCO did not have representation from independent special districts on January 1, 2001, the LAFCO was required to "initiate proceedings for representation of independent special districts upon the [LAFCO] *if requested by independent special districts...*"[31] (Emphasis added.)
- Changes were made in funding for LAFCOs; instead of the existing requirement of being entirely funded by the county, LAFCOs with representation by cities and special districts are now funded by a one-third share each from the county, cities and special districts.[32] The independent special districts' share was apportioned according to each district's revenues for general purpose transactions, as reported in the most recent edition of the "Financial Transactions Concerning Special Districts" published by the State Controller, or by an alternative method approved by a majority of the independent special districts representing a majority of their combined populations.[33]
- A new provision was added to authorize LAFCOs to waive certain fees, when fees for specified proceedings are charged and the LAFCO finds that payment would be detrimental to the public interest.[34]
- The provisions regarding the sphere of influence for each local government agency were changed as follows:
    - The LAFCO shall review and update the sphere of influence *not less than once every five years*;[35]
    - For any sphere of influence or sphere of influence that includes a special district, the LAFCO shall:
        - require existing districts to file written statements specifying functions or classes of service provided;

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[29] Government Code section 56001.

[30] Government Code section 56325.

[31] Government Code section 56332.5.

[32] Government Code section 56381, subdivision (a).

[33] Government Code section 56381, subdivision (b)(1).

[34] Government Code section 56383.

[35] Government Code section 56425, subdivision (f).

- establish the nature, location, and extent of any functions or classes of service provided by existing districts; and
- determine that, except as otherwise authorized by regulations, no new or different function or class of service shall be provided by any existing district unless approved by the LAFCO.[36] (Emphasis added.)

- A review and update to the sphere of influence requires LAFCOs to conduct a municipal service review.[37] In conducting a municipal service review, a LAFCO shall prepare a written statement of its determinations with respect to each of the following nine topics:

  1. infrastructure needs or deficiencies;
  2. growth and population projections for the affected area;
  3. financing constraints and opportunities;
  4. cost avoidance opportunities;
  5. opportunities for rate restructuring;
  6. opportunities for shared facilities;
  7. government structure options, including advantages and disadvantages of consolidation or reorganization of service providers;
  8. evaluation of management efficiencies; and
  9. local accountability and governance. [38]

- Not later than July 1, 2001, OPR, in consultation with LAFCOs, the California Association of Local Agency Formation Commissions, and other local governments, was required to prepare guidelines for municipal service reviews to be conducted by LAFCOs.[39]

LAFCO Revenues from Independent Special Districts (Stats. 2002, Ch. 493)

- This statute revised the method for calculating independent special district revenues to be paid to LAFCOs, basing the calculation on nonenterprise revenues and enterprise revenues rather than general purpose transactions.[40] It also capped the share of any one independent special district to 50% of the total independent special districts' share of operating costs.[41] Additionally, revenue relief was provided for health care districts with negative net revenue and for those operating under public entity bankruptcy.[42]

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[36] Government Code section 56425, subdivision (h), as enacted in Statutes 2000, chapter 761, subsequently renumbered to Government Code section 56425, subdivision (i).

[37] Government Code section 56430, subdivision (a).

[38] *Ibid.*

[39] Government Code section 56430, subdivision (d).

[40] Government Code section 56381, subdivision (b)(1)(C).

[41] Government Code section 56381, subdivision (b)(1)(F).

[42] Government Code section 56381, subdivision (b)(1)(D).

Municipal Service Review Guidelines and Municipal Service Review Appendices Issued by the Governor's Office of Planning and Research (Final Drafts Issued 10/03/02)

- OPR developed the Guidelines and Appendices as directed by the test claim statutes,[43] which require OPR to prepare *guidelines* rather than regulations. Hence the documents should be considered advisory rather than regulatory.
- The Guidelines and Appendices describe the statutory framework and requirements of the municipal service review, and provide guidance on:
    1. how the LAFCO, service provider agencies and the public can prepare to most effectively engage in the process;
    2. integrating municipal service reviews with other LAFCO actions, application of the California Environmental Quality Act (CEQA) and federal and state anti-discrimination statutes, and development of the nine statutorily-required determinations;[44] and
    3. how to draft the final individual municipal service review report and how to ensure adequate public participation opportunities, including statutory meeting requirements.[45]

Claimant's Position

The claimant states that the test claim statutes and executive orders impose 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 the following activities and costs are reimbursable:

1. Time and expense of representing Sacramento Metropolitan Fire District on the Sacramento County LAFCO, if chosen by the independent special district selection committee, pursuant to Government Code section 56326.5.
2. Time and expense of representing Sacramento Metropolitan Fire District on the independent special district selection committee, pursuant to Government Code section 56326.5.
3. Costs to fund Sacramento Metropolitan Fire District's share of the operating budget for the Sacramento County LAFCO, pursuant to Government Code sections 56326.5, 56381 and 56381.6, and/or as suggested by the LAFCO Municipal Service Guidelines Appendices, pages 26-27.
4. Time and expense of providing information to the LAFCO when the LAFCO determines a sphere of influence, pursuant to Government Code section 56425, subdivision (g).[46]

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[43] Government Code section 56430, subdivision (d).

[44] Government Code section 56430.

[45] Municipal Service Review Guidelines, Executive Summary, page 2.

[46] So claimed; however, subdivision (g) did not require these activities but subdivision (h) had similar language: "For any sphere of influence or a sphere of influence that includes a special district, the [*LAFCO*] shall do all of the following: (1) Require existing districts to file written

5. Pursuant to page 12 of the LAFCO Municipal Service Review Guidelines, time and expense of providing the following information, depending on the type of service provided, to the LAFCO when the LAFCO conducts a municipal service review:[47]
   - a list of relevant statutory and regulatory obligations;
   - a copy of the most recent master services plan;
   - a metes and bounds legal description of the agency's boundary;
   - service area maps (to the extent already prepared) including:
     - a service boundary map;
     - a map indicating parcel boundaries (GIS maps may be available from the land use jurisdiction);
     - a vicinity or regional map with provider's boundary, major landmarks, freeways or highways, and adjacent or overlapping service provider boundaries (note: more than one map may need to be prepared to show all data); and
     - maps indicating existing land uses within city or district boundaries and on adjacent properties.
   - applicable excerpts from regional transportation, water, air quality, fair share housing allocation, airport land use, open space or agricultural plans or policies, or other environmental policies or programs;
   - copies of regulatory and operating permits;
   - number of acres or square miles included within the service area;
   - type of sphere or sphere boundaries;
   - assessed valuation;
   - estimate of population within district boundaries;
   - as appropriate, the number of people, households, parcels or units currently receiving service, or the number of service connections;
   - projected growth in service demand or planned new service demand/capacity;
   - special communities of interest or neighborhoods affected by service;

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statements with the [LAFCO] specifying the functions or classes of service provided by those districts. (2) Establish the nature, location, and extent of any functions or classes of service provided by existing districts. (3) Determine that, except as otherwise authorized by the regulations, no new or different function or class of service shall be provided by any existing district, except upon approval by the [LAFCO]." (Emphasis added.)

[47] Rather than stating that districts must provide the information, page 12 of the Municipal Service Review Guidelines actually states: "Below is a list of the types of information a service provider [i.e., independent special district] may wish to gather to expedite the municipal service review process. It is not necessary to collect all types of data listed below. Select only those items that are relevant to the type of services under review." Furthermore, on page 13 the Guidelines state: "Don't Reinvent the Wheel Service providers [i.e., independent special districts] may regularly submit reports to a regulatory or financing agency which contain the information LAFCO needs to complete the municipal service review. Use the information in these reports to respond to information requests by LAFCO. ... Early consultation with LAFCO and meaningful input by the service provider can reduce the time and cost to both parties."

- capital improvement plans;
- current service capacity;
- call volume;
- response time; and
- annual operating budget.

6. Pursuant to page 17 of the LAFCO Municipal Service Review Guidelines, time and expense for the LAFCO to prepare a workplan when a LAFCO conducts a municipal service review, which includes the following elements:
   - list of services to be reviewed;
   - service providers that will be affected/involved;
   - study area boundaries for the municipal service review;
   - data collection process;
   - public participation process; and
   - public hearing process.
7. Pursuant to Chapter 7, commencing on page 24, of the LAFCO Municipal Service Review Guidelines, time and expense for the LAFCO to prepare an Environmental Impact Report when the municipal services review is considered a "project" which must comply with the California Environmental Quality Act ("CEQA"), and if future land use determinations are to be based on the municipal service review.
8. Pursuant to Government Code section 56430 and pages 29 through 36 of the LAFCO Municipal Service Review Guidelines, time and expense for the LAFCO when conducting a municipal service review to prepare a written statement of its determinations with respect to each of the following nine issues:
   - infrastructure needs or deficiencies;
   - growth and population projections for the affected area;
   - financing constraints and opportunities;
   - cost avoidance opportunities;
   - opportunities for rate restructuring;
   - opportunities for shared facilities;
   - government structure options, including advantages and disadvantages of consolidation or reorganization of service providers;
   - evaluation of management efficiencies; and
   - local accountability and governance.
9. Pursuant to page 35 of the Municipal Service Review Guidelines, time and expense of the LAFCO, when conducting a municipal service review and evaluating an agency's or district's management efficiencies, to obtain information from the agency or district with respect to the following factors or issues:[48]

[48] Leading into the list of factors or issues, the Guidelines actually state: "In evaluating an agency's management efficiencies, LAFCO may wish to address the following factors in its review: ..."

- evaluation of the agency's capacity to assist with and/or assume services provided by other agencies;
- evaluation of agency's spending on mandatory programs;
- comparison of agency's mission statement and published customer service goals and objectives;
- availability of master service plan(s);
- contingency plans for accommodating existing and planned growth;
- publicized activities;
- implementation of continuous improvement plans and strategies for budgeting, managing costs, training and utilizing personnel, and customer service and involvement;
- personnel policies;
- availability of resources (fiscal, manpower, equipment, adopted service or work plans) to provide adequate service;
- available technology to conduct an efficient business;
- collection and maintenance of pertinent data necessary to comply with state laws and provide adequate services;
- opportunities for joint powers agreements, Joint Powers Authorities, and/or regional planning opportunities;
- evaluation of agency's system of performance measures;
- capital improvement projects as they pertain to Government Code sections 65401 and 65103, subdivision (c);
- accounting practices;
- maintenance of contingency reserves;
- written policies regarding the accumulation and use of reserves and investment practices;
- impact of agency's policies and practices on environmental objectives and affordable housing;
- environment and safety compliance; and
- current litigation and/or grand jury inquiry involving the service under LAFCO review.

10. Pursuant to Government Code section 56820.5[49] and the LAFCO Municipal Service Review Guidelines Appendices, time and expense of the Sacramento Metropolitan Fire District to provide information regarding the municipal service review required under regulations adopted by the LAFCO. This provision was mentioned in the narrative but was not specifically pled by claimant.
11. Costs paid to the LAFCO for reviewing the District's component of a municipal service review.

Claimant estimates the following costs to implement the program: 1) $20,000 - $30,000 for claimant's portion of the annual LAFCO budget for the period January 1, 2001 through

[49] Government Code section 56820.5, renumbered from Government Code section 56451 in Statutes 2000, chapter 761.

December 31, 2001; 2) $50,000 - $80,000 for claimant's portion of the annual LAFCO budget for the period of January 1, 2002 and beyond; 3) in excess of $20,000 to provide to the LAFCO the information required for a municipal service review; and 4) $5,000 to the LAFCO for its review of claimant's component of the municipal service review.

Claimant filed additional comments in response to the Department of Finance's comments which are addressed, as necessary, in the analysis.

Position of Department of Finance

The Department of Finance states that the test claim statutes may have resulted in costs mandated by the state, but points out the following:

- A special district may lawfully decline to sit as a member of its LAFCO.
- Although LAFCO independent special district selection committee membership is required by law, special districts are not required to participate in the committee's activities; many are members in name only.
- LAFCOs have existing statutory fee authority that may be used to cover their operating costs. To the extent that LAFCOs elect to make use of this authority, LAFCO members would be relieved of the need to contribute toward the LAFCO's annual budget.
- LAFCOs have had statutory authority to require information of local agencies since 1965.
- OPR's Municipal Service Review Guidelines and Appendices do not carry the force of law.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[50] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[51] "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."[52]

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[50] 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."

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

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

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.[53] 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.[54]

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.[55] To determine if the program is new or imposes a higher level of service, the test claim requirements must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes.[56] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[57]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[58]

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.[59] 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."[60]

The analysis addresses the following issues:

- Is Sacramento Metropolitan Fire District an eligible claimant under article XIII B, section 6 of the California Constitution?

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

[54] *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*).

[55] *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 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

[58] *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.

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

[60] *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 (*City of San Jose*).

- Do the test claim statutes or alleged executive orders mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?
- Do the test claim statutes or alleged executive orders impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Issue 1: Is Sacramento Metropolitan Fire District an eligible claimant under article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 was adopted in recognition of the state constitutional restrictions on the powers of local government to tax and spend, and requires a subvention of funds to reimburse local agencies when the state imposes a new program or higher level of service upon those agencies. The Third District Court of Appeal in *County of Placer v. Corin* (1980) 113 Cal.App.3d 443 explained the reasoning behind Article XIII B as follows:

> Article XIII B was adopted less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13" [article XIII A]. While article XIII A was generally aimed at controlling ad valorem property taxes and the imposition of new "special taxes" [citations], the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level ... [61]

The court further described this concept:

> [A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation," which consists primarily of the authorization to expend during a fiscal year the "proceeds of taxes." (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to the proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[62]

Thus, since taxing and spending limitations are placed only on the proceeds of taxes, "[n]o state duty of subvention is triggered where the local agency is not required [by the test claim statutes] to expend the proceeds of taxes."[63] Section 9 of Article XIII B sets forth specific circumstances wherein the costs in question *are not* "appropriations subject to limitation," and therefore subvention is not required. One such exclusion to the limitation is found in subdivision (c), which applies to special districts:

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[61] *County of Placer, supra,* 113 Cal.App.3d 443, 446.

[62] *Id.* at 447.

[63] *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.

> Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

The claimant, Sacramento Metropolitan Fire District, is a special district that was formed by reorganization of the Sacramento County Fire District and the American River Fire District on December 1, 2000.[64] Therefore, the district did not exist on January 1, 1978 and its appropriations do not meet the first criteria.

The claimant's revenues consist of, among other things, property taxes, fines, and fees for services.[65] Thus, the claimant is not a district "which is totally funded by other than the proceeds of taxes" and its appropriations do not meet the second criteria. Consequently, the article XIII B, section 9, subdivision (c), exclusion to the appropriations limit is not applicable to the appropriations of Sacramento Metropolitan Fire District. The District is therefore an eligible claimant within the meaning of article XIII B, section 6.

Issue 2: Do the test claim statutes or alleged executive orders mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

Courts have recognized the purpose of article XIII B, section 6 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."[66] The cases have held that 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,[67] and the required activity or task is new, constituting a "new program," or it creates a "higher level of service" over the previously required level of service.[68]

Alternatively, in light of the intent of article XIII B, section 6, a reimbursable state-mandated program has been found to exist in some instances when the state shifts fiscal responsibility for a mandated program to local agencies but no actual activities have been imposed by the test claim statute or executive order.[69] Moreover, as of November 3, 2004, article XIII B, section 6, subdivision (c), of the California Constitution defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility

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[64] *Department History,* http://www.smfd.ca.gov/.

[65] Sacramento Metropolitan Fire District, Final Budget for Fiscal Year 2007, page A-29.

[66] *County of San Diego, supra,* 15 Cal. 4th 68, 81 (citing *Lucia Mar, supra,* 44 Cal.3d 830).

[67] *Long Beach, supra,* 225 Cal.App.3d 155, 174.

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

[69] *Lucia Mar, supra,* 44 Cal.3d 830, 836.

for a required program for which the State previously had complete or partial financial responsibility."[70]

Thus, a mandated "new program or higher level of service" may be found under either circumstance cited above, that is, where the test claim statutes mandate *activities* that are new in comparison to the preexisting scheme that result in providing a service to the public, *or* where the *state shifts from itself to local agencies* the cost for a *required* program.

Claimant is seeking reimbursement for the following:

1. time and expense of representing Sacramento Metropolitan Fire District on the independent special district selection committee;
2. time and expense of representing Sacramento Metropolitan Fire District on the Sacramento LAFCO, if that district is chosen by the independent special district selection committee;
3. costs for the Sacramento Metropolitan Fire District to fund its share of the operating budget for the Sacramento LAFCO;
4. time and expense of providing information to the LAFCO when the LAFCO determines a sphere of influence;
5. time and expense of providing information to the LAFCO when the LAFCO conducts a municipal service review;
6. time and expense for the LAFCO to prepare a workplan when the LAFCO conducts a municipal service review;
7. when the municipal service review is considered a "project" under the California Environmental Quality Act, time and expense for the LAFCO to prepare an Environmental Impact Report;
8. when the LAFCO conducts a municipal service review, the LAFCO shall prepare a written statement with regard to nine specified issues;
9. when the LAFCO conducts a municipal service review and the LAFCO is evaluating an agency's or district's management efficiencies, time and expense for the LAFCO to obtain specified information from the agency or district;
10. time and expense of providing information required under regulations adopted by the LAFCO and by the Municipal Service Review Guidelines Appendices; and
11. costs paid to the LAFCO for reviewing the District's component of a municipal service review.

In the analysis below, the alternative tests for a "new program or higher level of service" are applied as appropriate to each of these items. However, any activities of the LAFCO are not addressed since LAFCOs are not represented in this claim; instead, the claimant is an independent special district and represents only independent special districts in the claim.

[70] Enacted by the voters as Proposition 1A, November 2, 2004.

Legislative Findings and Declarations (Gov. Code, § 56001

Government Code section 56001 sets forth the legislative findings and declarations with regard to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This section is helpful in understanding the purposes for LAFCOs and the scope of LAFCO operations, but does not mandate any activities on local agencies in California. Therefore, Government Code section 56001 does not mandate a "new program or higher level of service" on independent special districts.

Representation on LAFCO and Independent Special District Selection Committee (Gov. Code, § 56326.5, subd. (d))

The Government Code sets forth provisions for the composition and selection of members of LAFCOs. There are general provisions for most counties,[71] and some counties, including Sacramento, have specific statutory provisions for the composition of their LAFCOs.[72] The test claim statute pled by the claimant is section 56326.5. The analysis is limited to subdivision (d) of that section, since it is the only subdivision dealing with independent special districts.[73]

For this test claim statute, the question is whether subdivision (d) mandates new activities that constitute a "new program or higher level of service" over an existing program. For the reasons stated below, staff finds that *individual* special district representation and participation on the LAFCO is a local discretionary decision, and participation in the independent special district selection committee is a discretionary decision of the independent special district. Consequently, section 56326.5, subdivision (d), does not mandate a "new program or higher level of service."

LAFCO Representation

For most counties, Government Code section 56325 sets forth the following composition of the LAFCO:

> ... Except as otherwise provided in this chapter,[74] the [LAFCO] shall consist of members selected as follows:
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> > (a) Two appointed by the board of supervisors from their own membership. ...
> > (b) Two selected by the cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee. ...

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[71] Government Code section 56325.

[72] Counties with LAFCO membership and selection criteria set forth in *special* provisions of the Government Code: Kern County (section 56328.5), Los Angeles County (section 56326), Sacramento County (56326.5), Santa Clara County (sections 56327 and 56327.3), and San Diego County (section 56328).

[73] Since claimant is an independent special district, this test claim does not make any findings with regard to any other type of local government entity.

[74] *Ibid.*

(c) Two presiding officers or members of legislative bodies of independent special districts selected by the independent special district selection committee pursuant to Section 56332. ...
(d) One representing the general public appointed by the other members of the [LAFCO]. ...

Sacramento County is one of the counties with its own statutory provision setting forth the composition of the LAFCO. Government Code section 56326.5, as added by the test claim statute in 1991, states:

> In Sacramento County, the [LAFCO] *shall* consist of seven members, selected as follows:
>
> (a) Two representing the county, appointed by the board of supervisors from their own membership. ...
> (b) One representing the City of Sacramento who is a member of the city council, appointed by the mayor and confirmed by the city council. ...
> (c) One representing the cities in the county, who is a city officer appointed by the city selection committee. ...
> (d) Two representing special districts selected by an independent special district selection committee pursuant to Section 56332. ...[75]
> (e) One representing the general public, appointed by the other six members of the [LAFCO]. ... (Emphasis added.)

The plain language of subdivision (d) *requires* two independent special districts in Sacramento County to be represented on the LAFCO. The actual special district representatives, however, are *chosen* by the independent special district selection committee from a list of 66 independent special districts available in Sacramento County.[76] There is no other requirement specifying a *particular* independent special district is required to sit on the Sacramento County LAFCO. Claimant states that the statute "speaks in mandatory, not discretionary terms." Yet the mandatory requirement is for two independent special districts to be represented; the decision as to which districts are chosen to be on the LAFCO is made at the local level. Consequently, the state has not legally compelled that a *particular special district* sit on the Sacramento County LAFCO.

The Department of Finance further argues that, in the event a district is *chosen* by the selection committee, "[a] district may lawfully decline to sit as a member of its LAFCO."[77] There is no statutory requirement stating that an independent special district chosen by the selection committee must actually sit as a member of the LAFCO. Staff therefore finds that the state has not legally compelled a district that is chosen to sit on the LAFCO to actually serve on the LAFCO.

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[75] This subdivision was amended by Statutes 2000, chapter 761, pled in the test claim, to state: (d) Two presiding officers or members of legislative bodies of independent special districts selected by an independent special district selection committee pursuant to Section 56332."

[76] http://www.saclafco.org/.

[77] Letter from Connie Squires, Program Budget Manager, Department of Finance, submitted July 22, 2003, page 2.

Nevertheless, where no legal compulsion to participate in a program exists, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern,* the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.[78]

In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.[79] The Supreme Court held that hearing costs incurred as a result of specific, *statutorily required* expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[80] Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.[81] Ultimately, however, the Supreme Court denied reimbursement for the hearing procedures regarding discretionary expulsions on alternative grounds.[82]

Here, as noted above, neither the selection committee's decision to choose a particular district, nor that district's decision to serve on the LAFCO, is legally compelled by the state. Nor does evidence in the record support the notion that "practical" compulsion is applicable in the instant case. First, there are a myriad of factors that come to bear on a local decision to *choose* a particular district to serve on the LAFCO, which could include that district's own efforts to influence the decision to be the selected district. Moreover, there is no evidence that "certain and severe" penalties would ensue if a particular district is not chosen.

With regard to a district's decision not to serve on the LAFCO if chosen, the claimant asserts:

> [The argument] is analogous to the requirements of Government Code, Section 17553, which provides for the participation of the Department of Finance in matters before the Commission on State Mandates. Surely Finance does not have to participate, yet if it were not to participate, not only would its input not be known, but factors detrimentally affecting the state's budget could occur without its knowledge or participation. So too is true with regard to the participation of special districts in LAFCO.

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[78] *Kern High School Dist., supra,* 30 Cal.4th 727, 754.

[79] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[80] *Id.* at pages 881-882.

[81] *Id.* at page 887, footnote 22.

[82] *Id.* at page 888.

> ... Furthermore, ... [w]ithout participation of special districts, the LAFCO's special statutory fee authority could be used adversely to the interests of the LAFCO. ...[83]
>
> [W]ithout active participation [by special districts in the LAFCO], there is no guarantee that the costs of operating the LAFCO will be subject to any fiscal constraints. As noted in the test claim, LAFCO merely assembles what it wishes to have by way of operating capital for the next fiscal year, and assesses that total cost against the county, all cities and special districts within its jurisdiction. For this purpose, participation in LAFCO, to the extent the occasion presents itself, is imperative.[84]

Claimant's argument actually goes to whether a particular district should be *chosen* by the independent special district selection committee in the first place, and provides evidence to support an independent special district's advantage in seeking representation on the LAFCO so as to protect its own financial or other interests within the County, or the LAFCO's financial interests. It does not address whether a chosen district is compelled by the state to serve once chosen.

The relevant holding in this instance is from *Kern* wherein the Supreme Court states that school districts that have discretion will make the choices that are ultimately the most beneficial for the district:

> As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)[85]

The circumstances discussed in this passage are analogous to the instant situation. Claimant states that if an independent special district does not participate in the LAFCO, the district's input would not be known and actions detrimental to its interest or its legal responsibilities could occur without its knowledge or participation. Presumably, discretionary decisions to select independent special districts for representation on the Sacramento County LAFCO will be in the best interests of the independent special districts as a whole in the County. And, a chosen independent special district's decision to participate or not in LAFCO will be based on the district's own best interests. When the local selection committee and the local agencies involved have such discretion, the program is *not* state-mandated.

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[83] Claimant's response to Department of Finance, submitted September 25, 2003, page 2.

[84] *Id.* at page 3.

[85] *Kern High School Dist., supra,* 30 Cal.4th 727, 753.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to participate in the program.[86] In this case, the state has not required any particular independent special district to be represented on the LAFCO, rather the independent special district selection committee makes that decision. Nor has the state imposed certain and severe penalties for a chosen district's nonparticipation.

Therefore, staff finds that an independent special district chosen to sit on the Sacramento County LAFCO by the independent special district selection committee is not mandated by the *state* to do so. Consequently, Government Code section 56326.5, subdivision (d), does not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

Representation on Independent Special District Selection Committee

When the LAFCO in a county has independent special district representation, those districts are chosen by the independent special district selection committee. Government Code section 56326.5, subdivision (d), incorporates by reference section 56332, which sets forth the provisions establishing that committee.

For most counties, as noted above, having independent special district representation on the LAFCO is based on an initial discretionary decision at the local level. However, in Sacramento County, Government Code section 56326.5 requires such representation, which in turn triggers the requirement to establish the independent special district selection committee pursuant to section 56332. Section 56332 states in pertinent part:

> (a) The independent special district selection committee shall consist of the presiding officer of the legislative body of each independent special district. ... Each member of the committee shall be entitled to one vote for each independent special district of which he or she is the presiding officer. Members representing a majority of the districts shall constitute a quorum. ...
>
> (b) The executive officer shall call and give written notice of all meetings of the members of the selection committee. A meeting shall be called and held under either of the following circumstances:
> (1) Whenever a vacancy exists among the members or alternate members representing independent special districts upon the [LAFCO].
> (2) Upon receipt of a written request by one or more members of the selection committee representing districts having 10 percent or more of the assessed value of taxable property within the county, as shown in the last equalized county assessment roll.
>
> (c)(1) If the executive officer determines that a meeting of the special district selection committee, for the purpose of selecting the special district representatives or for filling a vacancy, is not feasible, the executive officer may conduct the business of the committee in writing, as provided in this subdivision. The executive officer may call for

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

nominations to be submitted in writing within 30 days. At the end of the nominating period, the executive officer shall prepare and deliver, or send by certified mail, to each independent special district one ballot and voting instructions. ...

(d) The selection committee shall appoint two regular members and one alternate member to the [LAFCO]. The members so appointed shall be elected or appointed special district officers residing within the county but shall not be members of the legislative body of a city or county. If one of the regular district members is absent from a [LAFCO] meeting or disqualifies himself or herself from participating in a meeting, the alternate district member may serve and vote in place of the regular district member for that meeting. The representation by a regular district member who is a special district officer shall not disqualify, or be cause for disqualification of, the member from acting on a proposal affecting the special district. The special district selection committee may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the district of which the member is a representative.

(e) If the office of a regular district member becomes vacant, the alternate member may serve and vote in place of the former regular district member until the appointment and qualification of a regular district member to fill the vacancy.

The independent special district selection committee is required by law to *consist* of the presiding officer of the legislative body of each independent special district. Claimant concludes that every district is required by law to participate in the committee. Staff finds, however, the plain language of the statute does not constitute legal compulsion for districts to *participate* in committee activities.

Nor does staff find the circumstances amount to practical compulsion. The Department of Finance asserts that many special districts are committee members in name only. A quorum for the committee to operate is a majority of the districts in the county.[87] Thus it is possible for the committee to conduct business with only a majority of the districts, not *every* district. According to Sacramento County LAFCO's website,[88] there are 66 independent special districts; 34 districts represent a quorum in Sacramento County. This means that 32 of the 66 independent special districts in Sacramento County could decline to participate in any given meeting. Moreover, no "certain or severe" penalties would result if a district fails to participate in the independent special district selection committee.

Instead, as noted above with regard to participation in the LAFCO by a chosen district, the principles of *Kern High School Dist.* are applicable.[89] An independent special district's decision to participate or not in the independent special district selection committee will be

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[87] Government Code section 56332, subdivision (a).

[88] http://www.saclafco.org/.

[89] *Kern High School Dist., supra,* 30 Cal.4th 727, 753.

based on the district's own best interests. When the independent special district selection committee members have such discretion, the program is *not* state-mandated.

Therefore, staff finds that an independent special district is not mandated by the state to participate in independent special district selection committee activities and, consequently, any such activities set forth in Government Code section 56326.5, subdivision (d), do not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

Independent Special Districts' Costs to Fund LAFCOs (Gov. Code, §§ 56381 and 56381.6)

Government Code section 56381 provides that when the LAFCO has independent special district representation on it, special districts are required to pay a one-third share of the budget for the LAFCO.[90] Section 56381.6 provides that for counties whose membership is established pursuant to sections 56326, 56326.5, 56327, or 56328, the LAFCO's annual operational costs "shall be apportioned among the classes of public agencies that select members on the [LAFCO] in proportion to the number of members selected by each class." Section 56381.6 also allows for an alternative cost apportionment subject to a majority affirmative vote of the [LAFCO] that includes the affirmative vote of at least one of the members selected by the county, city or special districts.

Government Code section 56326.5 provides that, in Sacramento County, independent special districts are required to be represented on the LAFCO. Accordingly, the independent special districts are required to pay their proportionate share of costs for funding the LAFCO.[91]

Section 56381 does not require independent special districts to engage in any activity or task. Alternatively, the statute does impose increased costs to the independent special districts in Sacramento County to fund the Sacramento County LAFCO. Based on the following analysis, however, staff finds that since the increased costs are not the result of a shift in fiscal responsibility from the *state* to local agencies, the district's costs to fund the Sacramento County LAFCO do not mandate a "new program or higher level of service" on the district.

In the case of *Lucia Mar*, the Supreme Court recognized that a "new program or higher level of service" within the meaning of article XIII B, section 6 could include a shift in costs from the state to a local entity for a required program.[92] As of November 3, 2004, Article XIII B, Section 6, subdivision (c), also requires reimbursement when the Legislature transfers from the state to local agencies "complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

However, the cost shift here is not from the *state* to the districts but from the *county* to the districts, since the immediately previous version of Government Code section 56381 required the counties to provide the entire budget for LAFCOs.[93] The Sixth District Court of Appeal in

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[90] If the county has no cities, then the county and independent special districts each pay a one-half share of the LAFCO's budget. (Gov. Code, § 56381.)

[91] In other counties in which independent special district representation on the LAFCO is based on an underlying discretionary decision at the local level, these costs are not mandated.

[92] *Lucia Mar, supra,* 44 Cal.3d 830, 836.

[93] Government Code section 56381, as enacted by Statutes 1985, chapter 541.

City of San Jose specifically addressed the issue of a cost shift among local agencies. In that case, the test claim statutes had authorized counties to charge cities and other local agencies the costs of booking into county jails persons who had been arrested by employees of the cities or local agencies.[94] The court rejected the City's reliance on the holding of *Lucia Mar*, stating:

> The flaw in City's reliance on Lucia Mar is that in our case the shift in funding is not from the State to the local entity but from county to city. In Lucia Mar, prior to the enactment of the statute in question, the program was funded and operated entirely by the state. Here, however, at the time [the test claim statute] was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county.[95]

The City of San Jose also unsuccessfully argued that, although counties have traditionally borne those expenses, "they do so only in their role as agents of the State."[96] However, the court noted that characterizing the county as an agent of the state "is not supported by recent case authority, nor does it square with definitions particular to subvention analysis."[97] The court found it relevant to point out that fiscal responsibility for the program in question had long rested with the county and not with the state.[98] In the instant case, counties have similarly had sole fiscal responsibility for LAFCOs since their inception.[99]

With regard to definitions peculiar to subvention analysis, the *San Jose* court stated:

> More importantly, in analyzing a question involving reimbursement under section 6, the definitions contained in California Constitution, article XIII B and in the legislation enacted to implement it must be deemed controlling. Article XIII B treats cities and counties alike as "local government." Under section 8, subdivision (d), this term means "any city, county, city and county, school district, special district, authority or other political subdivision of or within the state." Furthermore, Government Code section 17514 defines "costs mandated by the state" to mean any increased costs that a "local agency" or school district is required to incur. "Local agency" means "any city, county, special district, authority, or other political subdivision of the state." (Gov. Code § 17518.) Thus for purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike as part of "local government"; both are considered local agencies or political subdivisions of the State. Nothing in

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[94] *City of San Jose, supra,* 45 Cal.App.4th 1802, page 1806.

[95] *Id.* at 1812.

[96] *Id.* at 1814.

[97] *Ibid.*

[98] *Id.* at 1815.

[99] Former Government Code sections 54771 (Stats. 1963, ch.1810), 54776 (Stats. 1965, ch.587), and 54776.1 (Stats. 1969, ch. 1301).

article XIII B prohibits the sifting of costs between local governmental entities.[100]

Since the definitions for "local government" in the Constitution and "local agency" in the Government Code also include "special districts," the same principles apply here. Therefore, a shift of funding from a county to a special district is likewise not subject to state subvention. Accordingly, any independent special districts' share of costs to fund a LAFCO does not mandate a "new program or higher level of service" within the meaning of article XIII B, section 6.

Costs Paid to LAFCO for Reviewing District's Component of Municipal Service Review

There is no requirement in statute, nor is there any other evidence in the record, to support claimant's assertion that the independent special district is required by the state to pay the LAFCO for reviewing its component of the municipal service review. Any such requirement would have been established by the LAFCO itself, not the state via the test claim statutes. Therefore, the alleged costs do not result from a state-mandated "new program or higher level of service" within the meaning of article XIII B, section 6.

Gather and Provide Information to the LAFCO for Sphere of Influence Review and Municipal Service Review (Gov. Code, §§ 56425, 56426.5 and 56430; Municipal Service Review Guidelines and Appendices)[101]

Claimant asserts that various activities are required of independent special districts when the LAFCO conducts a sphere of influence review or a municipal service review, as set forth in Government Code sections 56425, 56426.5 and 56430, as well as the Municipal Service Review Guidelines and Appendices, resulting in a reimbursable state-mandated program being imposed on independent special districts. However, staff finds that, based on the plain language of the test claim statutes, with one exception addressed below, the claimed activities are *not* imposed on independent special districts, but rather on the *LAFCO* itself. Moreover, as discussed further below, the Municipal Service Review Guidelines and Appendices, to the extent that they do address special districts, do not meet the definition of "executive order" found in Government Code section 17516, since they do not "order" special districts to do anything.

Staff finds that only the following provisions are relevant in analyzing whether there are any activities required of independent special districts in a sphere of influence review or municipal service review.

Government Code section 56425, subdivision (f), as enacted by the test claim statutes, states the following:

> (f) Upon determination of a sphere of influence, the [LAFCO] shall adopt that sphere, and shall review and update, as necessary, the adopted sphere not less than once every five years.

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[100] *Id.* at 1815.

[101] Claimant mentioned Government Code section 56820.5 in the narrative of the test claim with regard to information the LAFCO requires of districts. However, claimant did not *specifically* plead the section, and, therefore, staff makes no findings with regard to it.

Pre-existing law required LAFCOs to "develop and determine the sphere of influence of each local governmental agency within the county"[102] and, upon determination of a sphere of influence, the LAFCO was required to adopt the sphere and periodically review and update the adopted sphere.[103] Although this review must now occur every five years, it is the *LAFCO* that is required to review and update the sphere of influence. Thus, the plain language of this provision does not mandate any activities on independent special districts.

Government Code section 56425, subdivision (h),[104] as enacted by the test claim statutes, states the following:

> (h) For any sphere of influence or a sphere of influence that includes a special district, the [LAFCO] shall do all of the following:
>
> (1) Require existing districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts.
>
> (2) Establish the nature, location, and extent of any functions or classes of service provided by existing districts.
>
> (3) Determine that, except as otherwise authorized by the regulations, no new or different function or class of service shall be provided by any existing district, except upon approval by the LAFCO.

Based on the plain language of this provision, only subdivision (h)(1) requires *special districts* to do anything. Subdivision (h)(1) requires the LAFCO to require special districts to provide specified information. The plain language of subdivisions (h)(2) and (h)(3) do not mandate any activities on independent special districts.

The prior law authorized LAFCOs to adopt, amend or repeal regulations affecting the functions and services of special districts, including the ability to enact regulations to require existing districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts.[105] Because of this prior law, the Department of Finance states that LAFCOs had pre-existing statutory authority to require information of local agencies. Staff agrees, but notes that *having authority* to require the information be provided by existing districts is not the same as *being required* to require the information. The pre-existing statutory authority gave LAFCOs discretion as to whether to enact regulations to require the information. Here, as a result of enacting subdivision (h)(1), it is the *state* that has made the decision to require the LAFCO to require existing districts to provide the information.[106]

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[102] Government Code section 56425, subdivision (a), as enacted by Statutes 1985, chapter 541.

[103] Government Code section 56425, subdivision (b), as enacted by Statutes 1985, chapter 541.

[104] Government Code section 56425, subdivision (h), as enacted by Statutes 2000, chapter 761, was subsequently renumbered to section 56425, subdivision (i), by Statutes 2005, chapter 347.

[105] Government Code section 56451, subdivision (b), as enacted by Statutes 1985, chapter 541.

[106] *San Diego Unified School Dist., supra,* 33 Cal.4th at 880, found that a provision in the Education Code constituted a state mandate, "in that it establishes conditions under which the

Hence, the activity of a special district filing written statements to the LAFCO, which specify the functions or classes of service provided by the district, is state-mandated. The activity was authorized but not required by the pre-existing statutory scheme. Furthermore, the activity provides an enhanced service to the public by improving the process for ensuring orderly growth and development in California and efficiently extending governmental services.[107] Therefore, this activity mandates a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

Government Code section 56426.5 was not amended by the test claim statutes. The section, as it existed when the test claim was filed, addressed spheres of influence affected by city incorporations or reorganizations that included city incorporations. Although the test claim statutes incorporated the section by reference into section 56430, subdivision (d), section 56426.5 does not mandate any activities on independent special districts.

Section 56430, as enacted by the test claim statutes, states the following:

> (a) In order to prepare and to update spheres of influence in accordance with section 56425, the [LAFCO] shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the [LAFCO]. The [LAFCO] shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:
>
> (1) Infrastructure needs or deficiencies.
> (2) Growth and population projections for the affected area.
> (3) Financing constraints and opportunities.
> (4) Cost avoidance opportunities.
> (5) Opportunities for rate restructuring.
> (6) Opportunities for shared facilities.
> (7) Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.
> (8) Evaluation of management efficiencies.
> (9) Local accountability and governance.
>
> (b) In conducting a service review, the [LAFCO] shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area.
>
> (c) The [LAFCO] shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or Section 56426.5 or to update a sphere of influence pursuant to Section 56425.
>
> ...

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state, rather than local officials, has made the decision requiring a school district to incur the costs ..."

[107] Government Code sections 56001 and 56301.

The plain language of this section does not mandate any activities on independent special districts.

With regard to the Municipal Service Review Guidelines and Appendices, as the Department of Finance notes, these documents do not have the force of law. Government Code section 17516 defines executive order as "any order, plan, requirement, rule or regulation" issued by the Governor, any officer or official serving at the pleasure of the Governor, or any agency, department, board, or commission of state government. Government Code section 56430, subdivision (d), states:

> (d) Not later than July 1, 2001, the Office of Planning and Research, in consultation with [LAFCOs], the California Association of Local Agency Formation Commissions, and other local governments, shall prepare guidelines for the service review to be conducted by [LAFCOs] pursuant to this section.

The Executive Summary of the Guidelines states the following:

> Existing law requires OPR to prepare guidelines, not regulations. This document should therefore be considered advisory and not regulatory. ...
>
> This document provides general guidance. LAFCOs may need to modify these recommendations to reflect local conditions, circumstances and types of services which are being reviewed. ...
>
> Throughout the Guidelines, OPR has identified those actions which are required by law and those where OPR recommends a particular process or policy when undertaking the municipal service review.

The Guidelines do not order independent special districts to engage in any activities. The Appendices to the Municipal Service Review support the Guidelines and likewise do not order special districts to engage in any activities. Thus, the Guidelines and Appendices are not "executive orders" pursuant to Government Code section 17516, and are not subject to article XIII B, section 6.

In summary, the only activity that mandates a "new program or higher level of service" in an existing program on independent special districts is set forth in Government Code section 56425, subdivision (h)(1), subsequently renumbered to subdivision (i)(1). This subdivision requires special districts to file written statements to the LAFCO specifying the functions or classes of service provided by the district, when the LAFCO prepares or updates a sphere of influence. However, only those independent special districts that are subject to article XIII B, section 6 – i.e., those districts that, because of their funding, are not excluded from the spending limits pursuant to article XIII B, section 9, subdivision (c) – are eligible claimants.

Issue 3: Do the test claim statutes or alleged executive orders impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

For the mandated activity in Government Code section 56425, subdivision (h)(1), to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section

17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant alleged in the test claim in excess of $20,000 to provide to the LAFCO the information required for a municipal service review. Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs for the mandated activity.

For the reasons stated below, staff finds that none of the statutory exceptions to reimbursement listed in Government Code section 17556 are applicable to deny the test claim.

The Department of Finance states that LAFCOs have existing fee authority that may be used to cover their operating costs. The Department further states that, to the extent that LAFCOs elect to make use of this authority, LAFCO members would be relieved of the need to contribute toward the LAFCO's annual budget. Moreover, many independent special districts, including Sacramento Metropolitan Fire District, have fee authority for specified purposes.

Government Code section 17556 states that:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ..., if, after a hearing, the commission finds that:
>
> ... (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Although some independent special districts have the ability to levy service charges or fees, the question here is whether the claimant has authority to levy service charges or fees that can be used to pay for the mandated activity of filing written statements to the LAFCO specifying the functions or classes of service provided by the district, and, if so, whether those fees are sufficient to pay for that mandated activity.

The authority to charge fees or service charges varies by special district, and fire districts have authority to charge fees for specified services.[108] Additionally, the LAFCOs themselves have authority to charge fees for certain services or "costs of proceedings" before the LAFCO.[109] These fees are limited, however, to the costs of providing the specified services, pursuant to Government Code section 66016. More importantly, there are no fees authorized for the *purpose* of the mandated activity of filing written statements to the LAFCO. Therefore, this exception does not apply to deny the test claim.

Conclusion

Staff finds that Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)), mandates a "new program or higher level of service" in an existing program, in that it requires special districts to file written statements with the LAFCO

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[108] Health and Safety Code section 13146, subdivision (e).

[109] Government Code section 56383.

specifying the functions or classes of service provided by those districts, when the LAFCO prepares or updates a sphere of influence. Furthermore, the provision imposes costs mandated by the state pursuant to Government Code section 17514 and article XIII B, section 6. Therefore, the activity constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Only those independent special districts that are subject to article XIII B, section 6 – i.e., those districts that, because of their funding, are not excluded from the spending limits pursuant to article XIII B, section 9, subdivision (c) – are eligible claimants. The reimbursement period begins July 1, 2001.

Staff concludes that Government Code section 56001 declares legislative findings and is helpful to interpret the test claim statutes, but does not mandate any activities. Staff further concludes that Government Code sections 56326.5, 56381, 56381.6, 56425 (except subdivision (h)(1), subsequently renumbered to subdivision (i)(1)), 56426.5, and 56430, and the Municipal Service Review Guidelines and Appendices developed by OPR, as pled, along with any other test claim statutes, guidelines and allegations not specifically approved above, do not mandate a new program or higher level of service subject to article XIII B, section 6.

Recommendation

Staff recommends the Commission adopt this analysis to partially approve the test claim.