ITEM 9

TEST CLAIM
FINAL 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, Governor's Office of Planning and Research)
LAFCO Municipal Services Review Guidelines Appendices
(Final Draft, October 3, 2002, Governor's Office of Planning and Research)

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 test claim statutes modify representation on the Sacramento County LAFCO, mechanisms for funding LAFCO operations when independent special districts are represented, and the process for LAFCOs to adopt and update the "sphere of influence" for each local agency within all California counties. The claimant is an independent special district, thus the findings of this test claim apply to independent special districts only and *not* LAFCOs or other local government agencies. Furthermore, only independent special districts that are subject to the tax and spend limitations of articles XIII A and XIII B are eligible claimants.

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 the test claim statutes require two special districts to be represented on the Sacramento County LAFCO. However, there is no evidence in the record that such activities impose "costs mandated by the state" pursuant to Government Code section 17514 and

article XIII B, section 6. Thus, any such activities do not impose a reimbursable, state-mandated program. With regard to the independent special district selection committee, staff finds that since the section of the Government Code which sets forth the requirements for the committee that selects the independent special districts for the LAFCO – Government Code section 56332 – was not pled in the test claim, the Commission does not have jurisdiction to make any findings with regard to that provision.

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 neither mandates any activities nor imposes 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 counties have been required to provide the entire budget for LAFCOs since 1963.

Finally, claimant seeks reimbursement for gathering and providing information to the LAFCO for sphere of influence reviews and 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, Government Code section 56425, subdivision (h), constitutes a state-mandated "new program or higher level of service" in an existing program: special districts shall be required by the LAFCO to file written statements with the LAFCO specifying the functions or classes of service provided by those districts as required by the LAFCO when undertaking specified sphere of influence reviews. All other activities claimed for sphere of influence reviews or municipal service reviews 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.

Conclusion

Staff finds that Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)), constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514, in that it requires independent special districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

Only those independent special districts that are subject to the tax and spend limitations of article XIII A and article XIII B are eligible claimants.

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, alleged executive orders, 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 to the Commission
09/25/03	Sacramento Metropolitan Fire District submitted rebuttal comments to the Department of Finance comments on the test claim to the Commission
06/28/07	Commission staff issued draft staff analysis
07/24/07	The Department of Finance submitted comments on the test claim to the Commission
07/25/07	Sacramento Metropolitan Fire District requested an extension of time to file comments on the draft staff analysis
07/25/07	Commission staff approved extension of time, to August 9, 2007, to file comments on the draft staff analysis
08/09/07	Sacramento Metropolitan Fire District filed comments on the draft staff analysis with the Commission
09/17/07	Commission staff issued the final staff analysis

Background

This test claim addresses representation on the Sacramento County Local Agency Formation Commission ("LAFCO"), changes to funding mechanisms for LAFCOs with independent special district representation, and modifications to the process for LAFCOs to adopt and update the "sphere of influence"[2] for each local government agency within a county.

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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.)

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 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

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[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.

[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).

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, 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] The term of office for each member is generally four years, but if independent special districts are added to the LAFCO, the first term of one of those members is only two years.[20] The body who originally appointed any member whose term has expired appoints his or her successor for a full term of four years, and any member may be removed at any time and without cause by the body appointing that member.[21] The expiration date of all terms of office is the first Monday in May in the year the term expires; vacancies in the membership are required to be filled for the unexpired term by appointment by the body originally appointing the member.[22] Provision is also made for appointing alternate members in each category, who are allowed to serve and vote in place of their member who is absent or disqualifies himself or herself from participating in a meeting of the LAFCO, and to fill vacancies in unexpired terms until a new member is appointed.[23]

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[14] Government Code section 56425.

[15] Government Code section 56426.

[16] Government Code sections 56076 and 56425.

[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] Government Code section 56334.

[21] *Ibid.*

[22] *Ibid.*

[23] Government Code sections 56325, 56331, 56331.3, 56332 and 56335.

LAFCO members and alternates are reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office and the LAFCO may authorize per diem payments to members or alternates for each day of attendance of LAFCO meetings.[24]

Any county having or choosing to have independent special district representation on the LAFCO is required to establish an independent special district selection committee to choose such members, which must consist of the presiding officer of the legislative body of each independent special district.[25] Meetings of the independent special district selection committee are required *only* when a vacancy of an independent special district member on the LAFCO occurs,[26] or when requested by one or more members of the selection committee representing 10 percent or more of the assessed value of taxable property within the county.[27] Where such meetings are not feasible, the executive officer of the committee may conduct the business of the committee in writing.[28]

LAFCOs are authorized to charge fees for the cost of specified proceedings undertaken by the LAFCO,[29] and funding and facilities for LAFCOs have historically been provided by the county served.[30]

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.[31] 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.[32]

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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[24] *Ibid.*

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

[26] Government Code section 56332, subdivision (c)(1), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (b)(1).

[27] Government Code section 56332, subdivision (c)(2), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (b)(2).

[28] Government Code section 56332, subdivision (d), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (c).

[29] Government Code section 56383.

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

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

[32] 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.[33] 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.[34]

This Test Claim is Limited to the Following Statutes and Alleged Executive Orders

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[35] — one of the city members must be from the City of Sacramento and two members representing independent 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.[36] The independent special district selection committee selects the two independent special district members.

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

[34] Government Code section 56301.

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

[36] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis for AB 748, June 18, 1991, page 1.

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

- The legislative findings and declarations for the Act were amended to include: 1) discouraging urban sprawl; 2) preserving open space and prime agricultural lands; and 3) efficiently extending government services.[37]
- 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.[38] 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.[39]
- 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*;[40]
    - 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;
        - 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.[41] (Emphasis added.)
    - A review and update to the sphere of influence requires LAFCOs to conduct a municipal service review.[42] 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;

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[37] Government Code section 56001.

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

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

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

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

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

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. [43]

- Not later than July 1, 2001, the Governor's Office of Planning and Research (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.[44]

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.[45] It also capped the share of any one independent special district to 50% of the total independent special districts' share of operating costs.[46] Additionally, revenue relief was provided for health care districts with negative net revenue and for those operating under public entity bankruptcy.[47]

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,[48] 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;[49] and

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[43] *Ibid.*

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

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

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

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

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

[49] Government Code section 56430.

3. how to draft the final individual municipal service review report and how to ensure adequate public participation opportunities, including statutory meeting requirements.[50]

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.[51]
2. Time and expense of representing Sacramento Metropolitan Fire District on the independent special district selection committee. These activities were mentioned in the narrative section of the test claim, but Government Code section 56332 which governs the independent special district selection committee was not specifically pled by claimant.
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).[52]
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:[53]

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

[51] Test claim, page 3; comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

[52] 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 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.)

[53] 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.

- 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;
- 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;

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."

- 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:[54]
   - 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;

[54] 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: ..."

- 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[55] 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 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 and the draft staff analysis, which are addressed, as necessary, in the analysis.

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

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.

The Department filed additional comments concurring with the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[56] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[57] "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."[58]

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.[59] In

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[56] 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."

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

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

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

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.[60]

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.[61] 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.[62] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[63]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[64]

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.[65] 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."[66]

The analysis addresses the following issues:

- Which independent special districts are eligible claimants under article XIII B, section 6 of the California Constitution?
- 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?

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[60] *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*).

[61] *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).

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

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

[64] *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.

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

[66] *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 Government Code sections 56326.5, subdivision (d), and 56425, subdivision (h)(1), 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: Which independent special districts are eligible claimants under article XIII B, section 6 of the California Constitution?

Not all independent special districts are subject to article XIII B, section 6. 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 ... [67]

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."[68]

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."[69] 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:

> 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

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

[68] *Id.* at 447.

[69] *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 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.[70] Therefore, the district did not exist on January 1, 1978 and its appropriations do not meet the first criteria that excludes their appropriations from the spending limit of article XIII B.

The claimant's revenues consist of, among other things, property taxes, fines, and fees for services.[71] 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.

For any other independent special district in California to be an eligible claimant under this test claim, that district must be subject to the tax and spend limitations of article XIII A and article XIII B, and *not* subject to the appropriations limit exclusions in article XIII B, section 9, subdivision (c).

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."[72] The cases have held that a test claim statute may impose a reimbursable state-mandated program in two ways.

First is where the test claim statute orders or commands a local agency or school district to engage in an activity or task,[73] and the required activity or task is new, constituting a "new program," or creates a "higher level of service" over the previously required level of service.[74]

Second, 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.[75] Additionally, as of November 3, 2004, article XIII B,

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

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

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

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

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

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

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 for a required program for which the State previously had complete or partial financial responsibility."[76]

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 but no activities are imposed.

Claimant is seeking reimbursement for the following:

1. 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;
2. time and expense of representing Sacramento Metropolitan Fire District on 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 the test claim statutes and to the items identified by claimant.

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

However, any activities of the *LAFCO itself* 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.

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 in Sacramento County (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,[77] and some counties have specific statutory provisions for the composition of their LAFCOs.[78] The test claim statute pled by the claimant, section 56326.5, enacted in 1991, specifies the composition of the Sacramento County LAFCO. The analysis is limited to subdivision (d) of that section, since it is the only subdivision dealing with independent special districts.

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 representation by two independent special districts on the Sacramento County LAFCO, selected by the independent special district selection committee pursuant to section 56332, mandates a "new program or higher level of service" on those independent special districts that serve on the LAFCO.

Staff further finds that since the section of the Government Code which sets forth the requirements for the committee that selects the independent special districts for the LAFCO – Government Code section 56332 – was not pled in the test claim, the Commission does not have jurisdiction to make any findings with regard to that provision.[79]

Prior to the test claim statute, Sacramento County was governed by Government Code section 56325 which provided that the LAFCO shall consist of five or seven members, seven if there was special district representation. The addition of special districts to LAFCOs pursuant to that section was *voluntary* on the part of the LAFCO.[80]

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[77] Government Code section 56325.

[78] 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).

[79] Nor did claimant plead any costs associated with section 56332.

[80] Government Code section 56332, as enacted by Statutes 1985, chapter 541.

Because of the test claim statute enacted in 1991, Sacramento County is now one of the counties with a statutory provision setting forth a more specific composition of members on its 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. ...*[81]
> (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 members representing independent special districts in Sacramento County, selected by the independent special district selection committee pursuant to Government Code section 56332, to sit on the Sacramento County LAFCO. In Sacramento County there are 66 independent special districts eligible to be represented on the LAFCO.[82] However, there is no other requirement specifying a *particular* independent special district is required to sit on the Sacramento County LAFCO.

Claimant argues that choosing the district via the independent special district selection committee is merely a mechanism by which the members are selected.[83] "[A]nd, use of this mechanism does not change the mandatory language of the statute that ensures that two special districts must be members of the LAFCO."[84]

The Department of Finance states 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."[85] In response, claimant argues that "[e]ven if each district in turn makes the voluntary decision not to participate, eventually some district will be forced to become a member," which amounts to legal compulsion.[86]

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[81] 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."

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

[83] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

[84] *Ibid.*

[85] Letter from Connie Squires, Program Budget Manager, Department of Finance, submitted July 18, 2003, page 2.

[86] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

Staff finds that section 56326.5, subdivision (d), constitutes a state mandate. Since the independent special district selection committee selects the members, there is discretion at the local level as to which independent special districts will be selected to serve on the LAFCO. And there are no statutory requirements stating that a chosen independent special district must actually sit as a member of the LAFCO or participate in LAFCO proceedings. Nevertheless, staff finds the plain language of the test claim statute legally compels two independent special districts in Sacramento County to be represented on the LAFCO, regardless of which two are selected.

The legislative history for Statutes 1991, chapter 439, indicates that the Sacramento County LAFCO chose to add independent special district representatives[87] *prior to* enactment of the test claim statute.[88] However, Government Code section 17565 addresses this issue:

> If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

Thus, the prior voluntary action of the Sacramento County LAFCO to include independent special district representation on its LAFCO does not preclude a state-mandate finding for the activity.

Moreover, the new requirement of having independent special district representation on the Sacramento LAFCO provides an enhanced service to the public by improving the process for ensuring orderly growth and development in Sacramento County, efficiently extending governmental services and ensuring fair representation of special districts in those processes.[89] 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.

Therefore, staff finds that Government Code section 56326.5, subdivision (d), requiring two representatives of independent special districts to be Sacramento County LAFCO members, mandates 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, subdivision (b)(1)(A), as added by Statutes 2000, chapter 761, provides that in counties in which there is a city and independent special district representation on the LAFCO, the county, cities, and independent special districts are required to pay a one-third share of the LAFCO's operational costs.[90] Section 56381.6 establishes how those costs are apportioned among classes of public agencies for certain LAFCOs, including

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[87] Pursuant to Government Code section 56332, which establishes the independent special district selection committee and sets forth its operating procedures.

[88] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis for AB 748, June 18, 1991, page 1.

[89] Government Code sections 56001, 56301 and 56326.5.

[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, subd. (b)(3).)

the Sacramento County LAFCO, but allows for an alternative cost apportionment by the affected LAFCOs.

Staff finds that LAFCOs with independent special district representation pursuant to their discretionary authority in Government Code sections 56325, 56332, and 56332.5, have made a discretionary decision to include special districts on the LAFCO. As a consequence, the requirement for districts to pay a proportionate share of costs for funding the LAFCO pursuant to sections 56381 and 56381.6 flows from that initial local discretionary decision and does not impose a state-mandated new program or higher level of service.[91]

Staff further finds that sections 56381 and 56381.6 require independent special districts in counties that are required to have independent special districts on the LAFCO to pay their proportionate share of costs for funding the LAFCO. These are the LAFCOs in Los Angeles County (section 56326), San Diego County (section 56328) and Sacramento County (56326.5).

Staff finds, however, that Government Code sections 56381 and 56381.6 do not mandate a new program or higher level of service on these independent special districts. The plain language of sections 56381 and 56381.6 does not require independent special districts to engage in any activity or task. Moreover, as described below these statutes do not shift fiscal responsibility from the *state* to independent special districts.

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 1963, prior to adoption of article XIII B, section 6, counties have been responsible for providing the entire budget for LAFCOs.[93] The Sixth District Court of Appeal in *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, specifically addressed the issue of a cost shift among local agencies. In that case, the test claim statutes 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

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[91] *Kern High School Dist., supra,* 30 Cal.4th 727, 743 (citing *City of Merced, supra,* 153 Cal.App.3d 777).

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

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

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

> [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:

> ... [I]n 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 article XIII B prohibits the shifting 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 to special districts. Therefore, a shift of funding from a county to a special district is likewise not subject to state subvention.

Claimant argues that *City of San Jose* is inapplicable in this instance because there is an increased level of service in the LAFCO which did not occur in the funding shift from the

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[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).

[100] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1815.

county to the City of San Jose.[101] Citing background language in the draft staff analysis regarding historical development of LAFCOs, claimant concludes that "the scope and authority of LAFCO has been expanding" and "the members of LAFCO have been providing an increasing higher level of service" which has resulted in new costs.[102] Then claimant argues: "The fact that this higher level of service and associated costs have been spread amongst many new claimants is not relevant. The legislation required a higher level of service and then established the manner in which the costs from the services are to be paid."[103]

Staff finds claimant's argument inapposite for this test claim, since the assertion is that actual activities were imposed on the LAFCO, yet the LAFCO is not a claimant here. Only independent special districts are represented in this test claim. Thus, the Commission has no jurisdiction to make any findings with regard to the assertion that a new program or higher level of service was imposed on *LAFCOs*. Moreover, as previously noted, Government Code sections 56381 and 56381.6 do not impose any actual activities on *special districts*. The cases are clear that increasing *costs* of providing services cannot be equated with requiring an increased level of service under a section 6 analysis,[104] and no activities are imposed on special districts in relation to their share of funding the LAFCO.

Thus, the only alternative to finding a new program or higher level of service for affected special districts is under the cost-shift analysis established in *Lucia Mar* and *City of San Jose*, and article XIII B, section 6, subdivision (c). Under this alternative, the test for determining whether a new program or higher level of service was imposed centers upon whether the *state* or the *local agency* previously had primary responsibility for the program.[105] Here, LAFCO operations have been funded by the counties since 1963. Therefore, the primary holding of *City of San Jose* is directly on point for this analysis: "Nothing in article XIII B prohibits the shifting of costs between local governmental entities."[106]

Accordingly, any independent special district's share of costs to fund the LAFCO pursuant to Government Code sections 56381 and 56381.6 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 Sacramento County independent special districts are required by the state to pay the LAFCO for reviewing the district's 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.

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[101] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 4.

[102] *Ibid.*

[103] *Ibid.*

[104] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877 (citing *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190).

[105] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1813.

[106] *Id.* at 1815.

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)[107]

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, 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.

Government Code section 56425:

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.

Pre-existing law required LAFCOs to "develop and determine the sphere of influence of each local governmental agency within the county"[108] and, upon determination of a sphere of influence, the LAFCO was required to adopt the sphere and periodically review and update the adopted sphere.[109] 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),[110] 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.

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[107] Claimant mentioned Government Code section 56820.5 in the narrative section 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.

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

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

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

(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.)

Based on the plain language of this provision, only subdivision (h)(1) imposes a state-mandated requirement for LAFCOs to require *special districts* to file written statements with the LAFCO specifying the functions or classes of service provided by the districts. The plain language of subdivisions (h)(2) and (h)(3) does 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.[111] 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.[112]

Hence, the activity of an independent 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, efficiently extending governmental services,[113] and advantageously providing for the present and future needs of the county and its communities.[114] 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.

In comments on the draft staff analysis, the claimant requested clarification as to whether the requirement to provide information under Government Code section 56425, subdivision (h)(1), includes *updates* that are necessary for the reviews by the LAFCO under subdivision (f).[115] As modified by the test claim statutes,[116] subdivision (f) stated:

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

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

[113] Government Code sections 56001 and 56301.

[114] Government Code section 56425, subdivision (a).

[115] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5.

[116] Statutes 2000, chapter 761.

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

Since subdivision (f) required the LAFCO to adopt, and review and update spheres of influence, the question is whether the spheres of influence identified in subdivision (h), i.e., "any sphere of influence" or "a sphere of influence that includes a special district," include updates to the identified spheres of influence.

In statutory construction cases, the fundamental task is to determine the Legislature's intent so as to effectuate the purpose of the statute.[117] The first step is to examine the statutory language, "giving the words their usual and ordinary meaning," and if the terms of the statute are unambiguous, it is presumed the lawmakers meant what they said and the plain meaning of the language governs.[118] However, if there is ambiguity in the plain language the inquiry must go further to extrinsic sources, including the objects to be achieved and the legislative history.[119] In that case, courts must select the construction that "comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."[120]

Here, "any" sphere of influence, given its ordinary meaning in this context would include "one or another [sphere of influence] without restriction or exception."[121] Thus, "any sphere of influence" would include updated spheres of influence, since updated spheres of influence are a type of sphere of influence contemplated by the statute pursuant to subdivision (f).

Furthermore, "a sphere of influence that includes a special district" must also be updated pursuant to subdivision (f), since nothing in the statute excludes such a sphere of influence from the requirement for updating. Therefore, "a sphere of influence that includes a special district" likewise includes *updated* spheres of influence.

The time frame for the above requirements is limited, however, because section 56425 was changed the following year. Statutes 2001, chapter 667,[122] narrowed the spheres of influence affected by the requirements of subdivision (h). The 2001 statute replaced "any sphere of influence or a sphere of influence that includes a special district" with "a sphere of influence for a special district." Thus, beginning January 1, 2002, the subdivision (h)(1) requirement – that LAFCOs require special districts to file written statements with the LAFCO specifying the functions or classes of service provided by the districts – is *only* applicable when LAFCOs adopt or update a sphere of influence for a special district, and not any other sphere of influence.

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[117] *Estate of Griswold* (2001) 25 Cal.4th 904, 910 (citing *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.).

[118] *Id.* at 911

[119] *Ibid.*

[120] *Ibid.*

[121] Webster's II New College Dictionary (1999) page 51, column 2.

[122] This statute was not pled by claimant.

Therefore, for the six-month period of July 1, 2001, through December 31, 2001, Government Code section 56425, subdivision (h)(1), mandates a new program or higher level of service for independent special districts to file written statements with the LAFCO specifying the functions or classes of service provided by the districts for any sphere of influence or sphere of influence that included a special district, including any *update* to a sphere of influence or any *update* to a sphere of influence that included a special district. On and after January 1, 2002, subdivision (h)(1) mandates a new program or higher level of service for independent special districts to file written statements to the LAFCO specifying the functions or classes of service provided by the districts, but only when LAFCOs adopt or update *a sphere of influence for a special district.*

Government Code section 56426.5:

Although the claimant pled Government Code section 56426.5, the statutes that added and amended it were not pled. Section 56426.5 was added by Statutes 1989, chapter 1384, and repealed and added again in Statutes 2002, chapter 614. Therefore, the Commission does not have jurisdiction to make any findings with regard to it.

Government Code section 56430:

Section 56430, as enacted by the test claim statutes, addresses developing and updating the sphere of influence, and 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.

...

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

Municipal Service Review Guidelines and Appendices:

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.

Claimant argues, however, that *all* activities necessary for independent special districts to cooperate with the LAFCO when it conducts a municipal service review should be reimbursed:

> For LAFCO to "conduct service reviews of the municipal services provided in the county" and to "comprehensively review all of the agencies that provide ... services", it requires the co-operation of those entities. The participation of District in these reviews is not a voluntary act: It is mandated upon District as it is upon LAFCO. To hold otherwise is to void the purpose of the law.[123]

[123] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5.

Here, claimant is asserting that special districts are "practically compelled" – if not legally compelled – to cooperate with the LAFCO in providing information the LAFCO requests. The appropriate test for "voluntariness," according to claimant, is found in *San Diego Unified School Dist.*,[124] wherein the Supreme Court cautioned "there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[125] In that passage, the court referenced the case of *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, which found a reimbursable state mandate was created by an executive order that required county firefighters to be provided with protective clothing and safety equipment.[126] The *San Diego* court theorized that, because the local agency possessed discretion concerning how many firefighters it would employ and could in that sense control costs, a strict application of the *City of Merced* rule could foreclose reimbursement in such a situation "for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc."[127] The court found it "doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result..."[128]

Staff finds, however, the *San Diego Unified School Dist.* citation is not on point. The *Carmel Valley* case involved actual legal compulsion for fire districts to provide fire safety equipment; the *San Diego* court warned prohibiting reimbursement based on the original discretionary decisions by the fire district on how many firefighters to employ, which could theoretically control costs, would not likely carry out the intent of article XIII B, section 6. In this case there is neither an initial discretionary decision at issue, nor actual legal compulsion. It is the *LAFCO* that is required to conduct the service review and obtain the information, and in only one instance, set forth above, does the statute actually require anything of the independent special district.

Instead, the test here for practical compulsion lies with *Kern High School Dist.*, i.e., whether "certain or severe" penalties or other "draconian" consequences would result if the district failed to provide information that is not statutorily required to the LAFCO for municipal service reviews.[129] There is nothing in law or the record to indicate any such consequences would ensue if a special district does not provide all information requested by the LAFCO, nor is there anything in the record to indicate that all information must be obtained directly from the affected special district.

Summary:

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[124] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5 referencing pages 3-4.

[125] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 887.

[126] *Ibid.*

[127] *Ibid.*

[128] *Ibid.*

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

The following statutes mandate a "new program or higher level of service" in an existing program on independent special districts that are subject to the tax and spend limitations in article XIII A and article XIII B:

1. Two representatives of independent special districts selected by the independent special district selection committee must be members of the Sacramento County LAFCO (Government Code section 56326.5, subdivision (d)).
2. File written statements to the LAFCO, when required by the LAFCO, specifying the functions or classes of service provided by the district, for the following time periods and types of spheres of influence:
    - July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
    - On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

    (Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1).)

Issue 3: Do Government Code sections 56326.5, subdivision (d), and 56425, subdivision (h)(1), 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 these statutes to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the statutes 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:

> The Sacramento Metropolitan Fire District does not have the total estimate of costs for discharging this program. However, the claimant is informed and believes that with the enactment of Chapter 761, Statutes of 2000, it cost between $20,000 to $30,000 to defray its portion of the LAFCO's annual budget, and it is estimated that because of the changes wrought by Chapter 493, Statutes of 2002, it will cost between $50,000 and $80,000 per year to so fund. Regarding the municipal services review, the LAFCO has indicated it will charge the claimant upwards of $5,000 to review its component, and it will cost the claimant in excess of $20,000 to provide the information required to the LAFCO.

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs for the activities mandated by Government Code section 56425, subdivision (h)(1) – providing specified information to the LAFCO as required by the LAFCO for specified sphere of influence reviews.

However, there is *no* evidence in the record that there are increased costs for the activities mandated by Government Code section 56326.5, subdivision (d) – representation by two

independent special districts on the Sacramento County LAFCO. The test claim citation above alleging estimated costs does not reference the 1991 test claim statute. And, even if costs are subsequently alleged, Government Code section 56334 provides that members and alternates are reimbursed by the LAFCO for their actual reasonable and necessary expenses:

> [LAFCO] members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The [LAFCO] may authorize payment of a per diem to [LAFCO] members and alternates for each day while they are at meetings of the [LAFCO].

Therefore, staff finds Government Code section 56326.5, subdivision (d), does not impose "costs mandated by the state" pursuant to Government Code section 17514 and no reimbursement is required.

With regard to the activities mandated by Government Code section 56425, subdivision (h)(1), 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 reimbursement for these activities.

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.

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.

Government Code section 56383 allows *LAFCOs* to establish a schedule of fees for the *costs of proceedings* such as filing and processing applications filed with the LAFCO, proceedings undertaken by the LAFCO and any reorganization committee, amending a sphere of influence or reconsidering a resolution. LAFCOs, however, are not represented in this claim, and the state-mandated program is imposed on independent special districts. Moreover, section 56383, subdivision (b), prohibits the schedule of fees from exceeding "the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016."[130] Thus, authority for charging fees under section 56383 for *costs of proceedings* does not equate to authority for charging fees to cover *operating costs*. Instead, Government Code section 56381 establishes the funding mechanisms for LAFCO's operating costs, i.e., one third from counties, one third from cities, and one third from special districts. Thus, the LAFCO's

[130] Government Code section 66016 requires local agencies to hold a public meeting prior to levying a new fee or service charge or increasing an existing fee or service charge, and the fees or service charges cannot exceed the estimated amount required to provide the service for which the service charge or fee is levied.

fee authority under section 56383 is not designed to pay for the mandated program and therefore is not "sufficient to pay for the mandated program or increased level of service" pursuant to section 17556, subdivision (d).

Although many independent special districts, including Sacramento Metropolitan Fire District, have fee authority for specified purposes as well as the ability to levy special taxes,[131] 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 "any service which the district provides or the cost of enforcing any regulation for which the fee is charged"[132] in addition to other specified fees.[133] These fees are likewise limited, however, to the costs of providing the specified services.[134] More importantly, there are no fees authorized specifically for the *purpose* of the mandated activity of filing written statements to the LAFCO under Government Code section 56425, subdivision (h)(1). Therefore, section 17556, subdivision (d) is not applicable to deny the test claim.

Conclusion

Staff finds that Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)), constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514, in that it requires independent special districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

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[131] Although some districts have the ability to levy special taxes, article XIII B was "intended to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues… [and] requires subvention only when the costs in question can be recovered solely from tax revenues." (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, in determining the constitutionality of Government Code section 17556, subdivision (d).) Therefore, any special taxes that can be levied by the special district are protected by article XIII B, whereas fees or service charges for specified purposes are not.

[132] Health and Safety Code section 13916, subdivision (a).

[133] Health and Safety Code sections 13143.5, 13146, 13146.2 and 13869.7.

[134] Health and Safety Code section 13916, subdivision (a) states in relevant part: "No fee shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged." See also Health and Safety Code sections 13143.5, 13146 and 13869.7 for similar limitations.

Only those independent special districts that are subject to the tax and spend limitations of article XIII A and article XIII B are eligible claimants.

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, alleged executive orders, 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.

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ITEM 10

TEST CLAIM
PROPOSED STATEMENT OF DECISION

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, Governor's Office of Planning and Research)
LAFCO Municipal Services Review Guidelines Appendices
(Final Draft, October 3, 2002, Governor's Office of Planning and Research)

Local Agency Formation Commissions

02-TC-23

Sacramento Metropolitan Fire District, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Local Agency Formation Commissions* test claim.[1]

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 9 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the December 6, 2007 Commission hearing.

[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Government Code Sections 56001, 56326.5, 56381, 56381.6, 56425, 56426.5, and 56430; LAFCO Municipal Services Review Guidelines (Final Draft, October 3, 2002, Governor's Office of Planning and Research), and LAFCO Municipal Services Review Guidelines Appendices (Final Draft, October 3, 2002, Governor's Office of Planning and Research); Statutes 1991, Chapter 439 (AB 748), Statutes 2000, Chapter 761 (AB 2838), and Statutes 2002, Chapter 493 (AB 1948) Filed on May 29, 2003, by the Sacramento Metropolitan Fire District, Claimant.	**Case No.: 02-TC-23** ***Local Agency Formation Commissions*** PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Proposed for Adoption on September 27, 2007*)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on September 27, 2007. [Witness list from September 27, 2007 hearing will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to partially approve this test claim.

Summary of Findings

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 test claim statutes modify representation on the Sacramento County LAFCO, mechanisms for funding LAFCO operations when independent special districts are represented, and the process for LAFCOs to adopt and update the "sphere of influence" for each local agency within all California counties. The claimant is an independent special district, thus the findings of this test claim apply to independent special districts only and *not* LAFCOs or other local government agencies. Furthermore, only those independent special districts that are subject to the tax and spend limitations of article XIII A and article XIII B are eligible claimants.

The Commission finds that only one of the alleged test claim statutes – Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)) – constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514. That section requires independent special districts to file written statements with the LAFCO, specifying the functions or classes of service provided by those districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

The Commission concludes that Government Code section 56001 declares legislative findings and is helpful to interpret the test claim statutes, but does not mandate any activities. The Commission 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 the Governor's Office of Planning and Research, as pled, along with any other test claim statutes, alleged executive orders, 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.

BACKGROUND

This test claim addresses representation on the Sacramento County Local Agency Formation Commission ("LAFCO"), changes to funding mechanisms for LAFCOs with independent special district representation, and 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 agencies.[6] The courts have referred to LAFCOs as the Legislature's "watchdogs" over local boundaries.[7]

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[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.

[6] Government Code section 56301.

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

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, 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.

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[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.

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] The term of office for each member is generally four years, but if independent special districts are added to the LAFCO, the first term of one of those members is only two years.[20] The body who originally appointed any member whose term has expired appoints his or her successor for a full term of four years, and any member may be removed at any time and without cause by the body appointing that member.[21] The expiration date of all terms of office is the first Monday in May in the year the term expires; vacancies in the membership are required to be filled for the unexpired term by appointment by the body originally appointing the member.[22] Provision is also made for appointing alternate members in each category, who are allowed to serve and vote in place of their member who is absent or disqualifies himself or herself from participating in a meeting of the LAFCO, and to fill vacancies in unexpired terms until a new member is appointed.[23]

LAFCO members and alternates are reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office and the LAFCO may authorize per diem payments to members or alternates for each day of attendance of LAFCO meetings.[24]

Any county having or choosing to have independent special district representation on the LAFCO is required to establish an independent special district selection committee to choose such members, which must consist of the presiding officer of the legislative body of each independent special district.[25] Meetings of the independent special district selection committee are required *only* when a vacancy of an independent special district member on the LAFCO occurs,[26] or when requested by one or more members of the selection committee representing

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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] Government Code section 56334.

[21] *Ibid.*

[22] *Ibid.*

[23] Government Code sections 56325, 56331, 56331.3, 56332 and 56335.

[24] *Ibid.*

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

[26] Government Code section 56332, subdivision (c)(1), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (b)(1).

10 percent or more of the assessed value of taxable property within the county.[27] Where such meetings are not feasible, the executive officer of the committee may conduct the business of the committee in writing.[28]

LAFCOs are authorized to charge fees for the cost of specified proceedings undertaken by the LAFCO,[29] and funding and facilities for LAFCOs have historically been provided by the county served.[30]

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.[31] 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.[32]

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:

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.

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[27] Government Code section 56332, subdivision (c)(2), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (b)(2).

[28] Government Code section 56332, subdivision (d), as enacted by Statutes 1985, chapter 541, subsequently renumbered to subdivision (c).

[29] Government Code section 56383.

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

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

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

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.[33] 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.[34]

This Test Claim is Limited to the Following Statutes and Alleged Executive Orders

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[35] — one of the city members must be from the City of Sacramento and two members representing independent 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.[36] The independent special district selection committee selects the two independent special district members.

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

- The legislative findings and declarations for the Act were amended to include: 1) discouraging urban sprawl; 2) preserving open space and prime agricultural lands; and 3) efficiently extending government services.[37]
- 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.[38] 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

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

[34] Government Code section 56301.

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

[36] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis for AB 748, June 18, 1991, page 1.

[37] Government Code section 56001.

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

alternative method approved by a majority of the independent special districts representing a majority of their combined populations.[39]

- 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*;[40]
    - 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;
        - 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.[41] (Emphasis added.)
    - A review and update to the sphere of influence requires LAFCOs to conduct a municipal service review.[42] 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. [43]
    - Not later than July 1, 2001, the Governor's Office of Planning and Research (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.[44]

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

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

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

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

[43] *Ibid.*

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

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.[45] It also capped the share of any one independent special district to 50% of the total independent special districts' share of operating costs.[46] Additionally, revenue relief was provided for health care districts with negative net revenue and for those operating under public entity bankruptcy.[47]

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,[48] 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;[49] and
    3. how to draft the final individual municipal service review report and how to ensure adequate public participation opportunities, including statutory meeting requirements.[50]

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.[51]

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

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

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

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

[49] Government Code section 56430.

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

2. Time and expense of representing Sacramento Metropolitan Fire District on the independent special district selection committee. These activities were mentioned in the narrative section of the test claim, but Government Code section 56332 which governs the independent special district selection committee was not specifically pled by claimant.

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).[52]

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:[53]
   - 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);

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[51] Test claim, page 3; comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

[52] 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 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.)

[53] 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."

    - 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;
- 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:[54]
   - 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

[54] 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: ..."

- current litigation and/or grand jury inquiry involving the service under LAFCO review.

10. Pursuant to Government Code section 56820.5[55] 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 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 and the draft staff analysis, 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.

The Department filed additional comments concurring with the draft staff analysis.

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

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[56] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[57] "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."[58]

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.[59] 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.[60]

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.[61] 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.[62] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[63]

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[56] 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."

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

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

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

[60] *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*).

[61] *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).

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[64]

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.[65] 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."[66]

The analysis addresses the following issues:

- Which independent special districts are eligible claimants under article XIII B, section 6 of the California Constitution?
- 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 Government Code sections 56326.5, subdivision (d), and 56425, subdivision (h)(1), 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: Which independent special districts are eligible claimants under article XIII B, section 6 of the California Constitution?

Not all independent special districts are subject to article XIII B, section 6. 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 ... [67]

The court further described this concept:

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[64] *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.

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

[66] *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*).

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

> [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."[68]

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."[69] 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:

> 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.[70] Therefore, the district did not exist on January 1, 1978 and its appropriations do not meet the first criteria that excludes their appropriations from the spending limit of article XIII B.

The claimant's revenues consist of, among other things, property taxes, fines, and fees for services.[71] 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.

For any other independent special district in California to be an eligible claimant under this test claim, that district must be subject to the tax and spend limitations of article XIII A and article XIII B, and *not* subject to the appropriations limit exclusions in article XIII B, section 9, subdivision (c).

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[68] *Id.* at 447.

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

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

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

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."[72] The cases have held that a test claim statute may impose a reimbursable state-mandated program in two ways.

First is where the test claim statute orders or commands a local agency or school district to engage in an activity or task,[73] and the required activity or task is new, constituting a "new program," or creates a "higher level of service" over the previously required level of service.[74]

Second, 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.[75] Additionally, 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 for a required program for which the State previously had complete or partial financial responsibility."[76]

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 but no activities are imposed.

Claimant is seeking reimbursement for the following:

1. 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;
2. time and expense of representing Sacramento Metropolitan Fire District on 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;

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

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

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

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

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

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 the test claim statutes and to the items identified by claimant. However, any activities of the *LAFCO itself* 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.

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 in Sacramento County (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,[77] and some counties have specific statutory provisions for the composition of their LAFCOs.[78] The test claim statute pled by the

[77] Government Code section 56325.

[78] 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).

claimant, section 56326.5, enacted in 1991, specifies the composition of the Sacramento County LAFCO. The analysis is limited to subdivision (d) of that section, since it is the only subdivision dealing with independent special districts.

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, the Commission finds that representation by two independent special districts on the Sacramento County LAFCO, selected by the independent special district selection committee pursuant to section 56332, mandates a "new program or higher level of service" on those independent special districts that serve on the LAFCO.

The Commission further finds that since the section of the Government Code which sets forth the requirements for the committee that selects the independent special districts for the LAFCO – Government Code section 56332 – was not pled in the test claim, the Commission does not have jurisdiction to make any findings with regard to that provision.[79]

Prior to the test claim statute, Sacramento County was governed by Government Code section 56325 which provided that the LAFCO shall consist of five or seven members, seven if there was special district representation. The addition of special districts to LAFCOs pursuant to that section was *voluntary* on the part of the LAFCO.[80]

Because of the test claim statute enacted in 1991, Sacramento County is now one of the counties with a statutory provision setting forth a more specific composition of members on its 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. ...*[81]
> (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 members representing independent special districts in Sacramento County, selected by the independent special district selection committee pursuant to Government Code section 56332, to sit on the Sacramento County LAFCO. In Sacramento County there are 66 independent special districts eligible to be represented on the

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[79] Nor did claimant plead any costs associated with section 56332.

[80] Government Code section 56332, as enacted by Statutes 1985, chapter 541.

[81] 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."

LAFCO.[82] However, there is no other requirement specifying a *particular* independent special district is required to sit on the Sacramento County LAFCO.

Claimant argues that choosing the district via the independent special district selection committee is merely a mechanism by which the members are selected.[83] "[A]nd, use of this mechanism does not change the mandatory language of the statute that ensures that two special districts must be members of the LAFCO."[84]

The Department of Finance states 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."[85] In response, claimant argues that "[e]ven if each district in turn makes the voluntary decision not to participate, eventually some district will be forced to become a member," which amounts to legal compulsion.[86]

The Commission finds that section 56326.5, subdivision (d), constitutes a state mandate. Since the independent special district selection committee selects the members, there is discretion at the local level as to which independent special districts will be selected to serve on the LAFCO. And there are no statutory requirements stating that a chosen independent special district must actually sit as a member of the LAFCO or participate in LAFCO proceedings. Nevertheless, the Commission finds the plain language of the test claim statute legally compels two independent special districts in Sacramento County to be represented on the LAFCO, regardless of which two are selected.

The legislative history for Statutes 1991, chapter 439, indicates that the Sacramento County LAFCO chose to add independent special district representatives[87] *prior to* enactment of the test claim statute.[88] However, Government Code section 17565 addresses this issue:

> If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

Thus, the prior voluntary action of the Sacramento County LAFCO to include independent special district representation on its LAFCO does not preclude a state-mandate finding for the activity.

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

[83] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

[84] *Ibid.*

[85] Letter from Connie Squires, Program Budget Manager, Department of Finance, submitted July 18, 2003, page 2.

[86] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 2.

[87] Pursuant to Government Code section 56332, which establishes the independent special district selection committee and sets forth its operating procedures.

[88] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis for AB 748, June 18, 1991, page 1.

Moreover, the new requirement of having independent special district representation on the Sacramento LAFCO provides an enhanced service to the public by improving the process for ensuring orderly growth and development in Sacramento County, efficiently extending governmental services and ensuring fair representation of special districts in those processes.[89] 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.

Therefore, the Commission finds that Government Code section 56326.5, subdivision (d), requiring two representatives of independent special districts to be Sacramento County LAFCO members, mandates 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, subdivision (b)(1)(A), as added by Statutes 2000, chapter 761, provides that in counties in which there is a city and independent special district representation on the LAFCO, the county, cities, and independent special districts are required to pay a one-third share of the LAFCO's operational costs.[90] Section 56381.6 establishes how those costs are apportioned among classes of public agencies for certain LAFCOs, including the Sacramento County LAFCO, but allows for an alternative cost apportionment by the affected LAFCOs.

The Commission finds that LAFCOs with independent special district representation pursuant to their discretionary authority in Government Code sections 56325, 56332, and 56332.5, have made a discretionary decision to include special districts on the LAFCO. As a consequence, the requirement for districts to pay a proportionate share of costs for funding the LAFCO pursuant to sections 56381 and 56381.6 flows from that initial local discretionary decision and does not impose a state-mandated new program or higher level of service.[91]

The Commission further finds that sections 56381 and 56381.6 require independent special districts in counties that are required to have independent special districts on the LAFCO to pay their proportionate share of costs for funding the LAFCO. These are the LAFCOs in Los Angeles County (section 56326), San Diego County (section 56328) and Sacramento County (56326.5).

The Commission finds, however, that Government Code sections 56381 and 56381.6 do not mandate a new program or higher level of service on these independent special districts. The plain language of sections 56381 and 56381.6 does not require independent special districts to engage in any activity or task. Moreover, as described below these statutes do not shift fiscal responsibility from the *state* to independent special districts.

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

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[89] Government Code sections 56001, 56301 and 56326.5.

[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, subd. (b)(3).)

[91] *Kern High School Dist., supra,* 30 Cal.4th 727, 743 (citing *City of Merced, supra,* 153 Cal.App.3d 777).

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 1963, prior to adoption of article XIII B, section 6, counties have been responsible for providing the entire budget for LAFCOs.[93] The Sixth District Court of Appeal in *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, specifically addressed the issue of a cost shift among local agencies. In that case, the test claim statutes 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:

> ... [I]n 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.

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

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

[94] *City of San Jose, supra,* 45 Cal.App.4th 1802, 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 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 article XIII B prohibits the shifting 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 to special districts. Therefore, a shift of funding from a county to a special district is likewise not subject to state subvention.

Claimant argues that *City of San Jose* is inapplicable in this instance because there is an increased level of service in the LAFCO which did not occur in the funding shift from the county to the City of San Jose.[101] Citing background language in the draft staff analysis regarding historical development of LAFCOs, claimant concludes that "the scope and authority of LAFCO has been expanding" and "the members of LAFCO have been providing an increasing higher level of service" which has resulted in new costs.[102] Then claimant argues: "The fact that this higher level of service and associated costs have been spread amongst many new claimants is not relevant. The legislation required a higher level of service and then established the manner in which the costs from the services are to be paid."[103]

The Commission finds claimant's argument inapposite for this test claim, since the assertion is that actual activities were imposed on the LAFCO, yet the LAFCO is not a claimant here. Only independent special districts are represented in this test claim. Thus, the Commission has no jurisdiction to make any findings with regard to the assertion that a new program or higher level of service was imposed on *LAFCOs*. Moreover, as previously noted, Government Code sections 56381 and 56381.6 do not impose any actual activities on *special districts*. The cases are clear that increasing *costs* of providing services cannot be equated with requiring an increased level of service under a section 6 analysis,[104] and no activities are imposed on special districts in relation to their share of funding the LAFCO.

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[100] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1815.

[101] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 4.

[102] *Ibid.*

[103] *Ibid.*

[104] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877 (citing *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190).

Thus, the only alternative to finding a new program or higher level of service for affected special districts is under the cost-shift analysis established in *Lucia Mar* and *City of San Jose*, and article XIII B, section 6, subdivision (c). Under this alternative, the test for determining whether a new program or higher level of service was imposed centers upon whether the *state* or the *local agency* previously had primary responsibility for the program.[105] Here, LAFCO operations have been funded by the counties since 1963. Therefore, the primary holding of *City of San Jose* is directly on point for this analysis: "Nothing in article XIII B prohibits the shifting of costs between local governmental entities."[106]

Accordingly, any independent special district's share of costs to fund the LAFCO pursuant to Government Code sections 56381 and 56381.6 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 Sacramento County independent special districts are required by the state to pay the LAFCO for reviewing the district's 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)[107]

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, the Commission finds that, 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.

Government Code section 56425:

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

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[105] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1813.

[106] *Id.* at 1815.

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

(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.

Pre-existing law required LAFCOs to "develop and determine the sphere of influence of each local governmental agency within the county"[108] and, upon determination of a sphere of influence, the LAFCO was required to adopt the sphere and periodically review and update the adopted sphere.[109] 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),[110] 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. (Emphasis added.)

Based on the plain language of this provision, only subdivision (h)(1) imposes a state-mandated requirement for LAFCOs to require *special districts* to file written statements with the LAFCO specifying the functions or classes of service provided by the districts. The plain language of subdivisions (h)(2) and (h)(3) does 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.[111] Because of this prior law, the Department of Finance states that LAFCOs had pre-existing statutory authority to require information of local agencies. The Commission 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

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

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

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

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

has made the decision to require the LAFCO to require existing districts to provide the information.[112]

Hence, the activity of an independent 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, efficiently extending governmental services,[113] and advantageously providing for the present and future needs of the county and its communities.[114] 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.

In comments on the draft staff analysis, the claimant requested clarification as to whether the requirement to provide information under Government Code section 56425, subdivision (h)(1), includes *updates* that are necessary for the reviews by the LAFCO under subdivision (f).[115] As modified by the test claim statutes,[116] subdivision (f) stated:

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

Since subdivision (f) required the LAFCO to adopt, and review and update spheres of influence, the question is whether the spheres of influence identified in subdivision (h), i.e., "any sphere of influence" or "a sphere of influence that includes a special district," include updates to the identified spheres of influence.

In statutory construction cases, the fundamental task is to determine the Legislature's intent so as to effectuate the purpose of the statute.[117] The first step is to examine the statutory language, "giving the words their usual and ordinary meaning," and if the terms of the statute are unambiguous, it is presumed the lawmakers meant what they said and the plain meaning of the language governs.[118] However, if there is ambiguity in the plain language the inquiry must go further to extrinsic sources, including the objects to be achieved and the legislative history.[119] In that case, courts must select the construction that "comports most closely with

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

[113] Government Code sections 56001 and 56301.

[114] Government Code section 56425, subdivision (a).

[115] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5.

[116] Statutes 2000, chapter 761.

[117] *Estate of Griswold* (2001) 25 Cal.4th 904, 910 (citing *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.).

[118] *Id.* at 911

[119] *Ibid.*

the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."[120]

Here, "any" sphere of influence, given its ordinary meaning in this context would include "one or another [sphere of influence] without restriction or exception."[121] Thus, "any sphere of influence" would include updated spheres of influence, since updated spheres of influence are a type of sphere of influence contemplated by the statute pursuant to subdivision (f).

Furthermore, "a sphere of influence that includes a special district" must also be updated pursuant to subdivision (f), since nothing in the statute excludes such a sphere of influence from the requirement for updating. Therefore, "a sphere of influence that includes a special district" likewise includes *updated* spheres of influence.

The time frame for the above requirements is limited, however, because section 56425 was changed the following year. Statutes 2001, chapter 667,[122] narrowed the spheres of influence affected by the requirements of subdivision (h). The 2001 statute replaced "any sphere of influence or a sphere of influence that includes a special district" with "a sphere of influence for a special district." Thus, beginning January 1, 2002, the subdivision (h)(1) requirement – that LAFCOs require special districts to file written statements with the LAFCO specifying the functions or classes of service provided by the districts – is *only* applicable when LAFCOs adopt or update a sphere of influence for a special district, and not any other sphere of influence.

Therefore, for the six-month period of July 1, 2001, through December 31, 2001, Government Code section 56425, subdivision (h)(1), mandates a new program or higher level of service for independent special districts to file written statements with the LAFCO specifying the functions or classes of service provided by the districts for any sphere of influence or sphere of influence that included a special district, including any *update* to a sphere of influence or any *update* to a sphere of influence that included a special district. On and after January 1, 2002, subdivision (h)(1) mandates a new program or higher level of service for independent special districts to file written statements to the LAFCO specifying the functions or classes of service provided by the districts, but only when LAFCOs adopt or update *a sphere of influence for a special district.*

Government Code section 56426.5:

Although the claimant pled Government Code section 56426.5, the statutes that added and amended it were not pled. Section 56426.5 was added by Statutes 1989, chapter 1384, and repealed and added again in Statutes 2002, chapter 614. Therefore, the Commission does not have jurisdiction to make any findings with regard to it.

Government Code section 56430:

Section 56430, as enacted by the test claim statutes, addresses developing and updating the sphere of influence, and states the following:

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[120] *Ibid.*

[121] Webster's II New College Dictionary (1999) page 51, column 2.

[122] This statute was not pled by claimant.

(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.

...

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

Municipal Service Review Guidelines and Appendices:

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.

Claimant argues, however, that *all* activities necessary for independent special districts to cooperate with the LAFCO when it conducts a municipal service review should be reimbursed:

> For LAFCO to "conduct service reviews of the municipal services provided in the county" and to "comprehensively review all of the agencies that provide ... services", it requires the co-operation of those entities. The participation of District in these reviews is not a voluntary act: It is mandated upon District as it is upon LAFCO. To hold otherwise is to void the purpose of the law.[123]

Here, claimant is asserting that special districts are "practically compelled" – if not legally compelled – to cooperate with the LAFCO in providing information the LAFCO requests. The appropriate test for "voluntariness," according to claimant, is found in *San Diego Unified School Dist.*,[124] wherein the Supreme Court cautioned "there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[125] In that passage, the court referenced the case of *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, which found a reimbursable state mandate was created by an executive order that required county firefighters to be provided with protective clothing and safety equipment.[126] The *San Diego* court theorized that, because the local agency possessed discretion concerning how many firefighters it would employ and could in that sense control costs, a strict application of the *City of Merced* rule could foreclose reimbursement in such a situation "for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be

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[123] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5.

[124] Comments by Sacramento Metropolitan Fire District, submitted August 9, 2007, page 5 referencing pages 3-4.

[125] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 887.

[126] *Ibid.*

employed, etc."[127] The court found it "doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result..."[128]

The Commission finds, however, the *San Diego Unified School Dist.* citation is not on point. The *Carmel Valley* case involved actual legal compulsion for fire districts to provide fire safety equipment; the *San Diego* court warned prohibiting reimbursement based on the original discretionary decisions by the fire district on how many firefighters to employ, which could theoretically control costs, would not likely carry out the intent of article XIII B, section 6. In this case there is neither an initial discretionary decision at issue, nor actual legal compulsion. It is the *LAFCO* that is required to conduct the service review and obtain the information, and in only one instance, set forth above, does the statute actually require anything of the independent special district.

Instead, the test here for practical compulsion lies with *Kern High School Dist.*, i.e., whether "certain or severe" penalties or other "draconian" consequences would result if the district failed to provide information that is not statutorily required to the LAFCO for municipal service reviews.[129] There is nothing in law or the record to indicate any such consequences would ensue if a special district does not provide all information requested by the LAFCO, nor is there anything in the record to indicate that all information must be obtained directly from the affected special district.

Summary:

The following statutes mandate a "new program or higher level of service" in an existing program on independent special districts that are subject to the tax and spend limitations in article XIII A and article XIII B:

1. Two representatives of independent special districts selected by the independent special district selection committee must be members of the Sacramento County LAFCO (Government Code section 56326.5, subdivision (d)).
2. File written statements to the LAFCO, when required by the LAFCO, specifying the functions or classes of service provided by the district, for the following time periods and types of spheres of influence:
    - July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
    - On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

    (Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1).)

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[127] *Ibid.*

[128] *Ibid.*

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

Issue 3: Do Government Code sections 56326.5, subdivision (d), and 56425, subdivision (h)(1), 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 these statutes to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the statutes 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:

> The Sacramento Metropolitan Fire District does not have the total estimate of costs for discharging this program. However, the claimant is informed and believes that with the enactment of Chapter 761, Statutes of 2000, it cost between $20,000 to $30,000 to defray its portion of the LAFCO's annual budget, and it is estimated that because of the changes wrought by Chapter 493, Statutes of 2002, it will cost between $50,000 and $80,000 per year to so fund. Regarding the municipal services review, the LAFCO has indicated it will charge the claimant upwards of $5,000 to review its component, and it will cost the claimant in excess of $20,000 to provide the information required to the LAFCO.

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs for the activities mandated by Government Code section 56425, subdivision (h)(1) – providing specified information to the LAFCO as required by the LAFCO for specified sphere of influence reviews.

However, there is *no* evidence in the record that there are increased costs for the activities mandated by Government Code section 56326.5, subdivision (d) – representation by two independent special districts on the Sacramento County LAFCO. The test claim citation above alleging estimated costs does not reference the 1991 test claim statute. And, even if costs are subsequently alleged, Government Code section 56334 provides that members and alternates are reimbursed by the LAFCO for their actual reasonable and necessary expenses:

> [LAFCO] members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The [LAFCO] may authorize payment of a per diem to [LAFCO] members and alternates for each day while they are at meetings of the [LAFCO].

Therefore, the Commission finds Government Code section 56326.5, subdivision (d), does not impose "costs mandated by the state" pursuant to Government Code section 17514 and no reimbursement is required.

With regard to the activities mandated by Government Code section 56425, subdivision (h)(1), for the reasons stated below, the Commission finds that none of the statutory exceptions to reimbursement listed in Government Code section 17556 are applicable to deny reimbursement for these activities.

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.

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.

Government Code section 56383 allows *LAFCOs* to establish a schedule of fees for the *costs of proceedings* such as filing and processing applications filed with the LAFCO, proceedings undertaken by the LAFCO and any reorganization committee, amending a sphere of influence or reconsidering a resolution. LAFCOs, however, are not represented in this claim, and the state-mandated program is imposed on independent special districts. Moreover, section 56383, subdivision (b), prohibits the schedule of fees from exceeding "the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016."[130] Thus, authority for charging fees under section 56383 for *costs of proceedings* does not equate to authority for charging fees to cover *operating costs*. Instead, Government Code section 56381 establishes the funding mechanisms for LAFCO's operating costs, i.e., one third from counties, one third from cities, and one third from special districts. Thus, the LAFCO's fee authority under section 56383 is not designed to pay for the mandated program and therefore is not "sufficient to pay for the mandated program or increased level of service" pursuant to section 17556, subdivision (d).

Although many independent special districts, including Sacramento Metropolitan Fire District, have fee authority for specified purposes as well as the ability to levy special taxes,[131] 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.

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[130] Government Code section 66016 requires local agencies to hold a public meeting prior to levying a new fee or service charge or increasing an existing fee or service charge, and the fees or service charges cannot exceed the estimated amount required to provide the service for which the service charge or fee is levied.

[131] Although some districts have the ability to levy special taxes, article XIII B was "intended to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues... [and] requires subvention only when the costs in question can be recovered solely from tax revenues." (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, in determining the constitutionality of Government Code section 17556, subdivision (d).) Therefore, any special taxes that can be levied by the special district are protected by article XIII B, whereas fees or service charges for specified purposes are not.

The authority to charge fees or service charges varies by special district, and fire districts have authority to charge fees for "any service which the district provides or the cost of enforcing any regulation for which the fee is charged"[132] in addition to other specified fees.[133] These fees are likewise limited, however, to the costs of providing the specified services.[134] More importantly, there are no fees authorized specifically for the *purpose* of the mandated activity of filing written statements to the LAFCO under Government Code section 56425, subdivision (h)(1). Therefore, section 17556, subdivision (d) is not applicable to deny the test claim.

CONCLUSION

The Commission finds that Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)), constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514, in that it requires independent special districts to file written statements with the LAFCO specifying the functions or classes of service provided by those districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

Only those independent special districts that are subject to the tax and spend limitations of article XIII A and article XIII B are eligible claimants.

The Commission concludes that Government Code section 56001 declares legislative findings and is helpful to interpret the test claim statutes, but does not mandate any activities. The Commission 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, alleged executive orders, 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.

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[132] Health and Safety Code section 13916, subdivision (a).

[133] Health and Safety Code sections 13143.5, 13146, 13146.2 and 13869.7.

[134] Health and Safety Code section 13916, subdivision (a) states in relevant part: "No fee shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged." See also Health and Safety Code sections 13143.5, 13146 and 13869.7 for similar limitations.

Commission on State Mandates

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Mailing Information: Final Staff Analysis

Mailing List

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